

Clause 4.6 Variation Request

BaptistCare Macquarie Park Concept Masterplan

157 Balaclava Road, Macquarie Park

Submitted to Department of Planning, Housing and Infrastructure
on behalf of BaptistCare



Prepared by Ethos Urban, a Colliers Company.

18 March 2025 | 2210583



'Gura Bulga'

Liz Belanjee Cameron

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



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

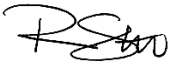
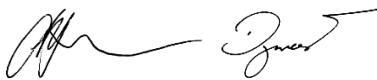
'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

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

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1.0 Introduction

1.1 Overview

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of BaptistCare NSW & ACT (the Applicant). It is submitted to the Department of Planning, Housing and Infrastructure (DPHI) in support of a State Significant Development Application (SSDA) identified as SSD-46561712 for the redevelopment of BaptistCare's landholding at 157 Balaclava Road, Macquarie Park (the site), and as part of the Applicant's formal amendment of the SSDA pursuant to section 37 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). The proposed Concept Masterplan seeks consent for a mixed-use development comprising seniors housing, residential flat buildings, shop top housing (the latter two including affordable housing), commercial premises, recreation areas, and roads.

Clause 4.6 of the *Ryde Local Environmental Plan 2014* (RLEP 2014) enables the consent authority to grant consent for development even though the development contravenes a development standard under the RLEP 2014 or any other environmental planning instrument. This Clause 4.6 Variation Request relates to the following development standards for building height:

- Co-living housing: clause 4.3 of the RLEP 2014, 45m;
- Seniors housing: clause 4.3 of the RLEP 2014 + section 87(2)(c) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), 45m + 3.8m = 48.8m; and
- Residential Flat Buildings and Shop top housing: clause 4.3 of the RLEP 2014 + section 16(3) of the Housing SEPP, 45m + 20% (being twice the proposed 10% affordable housing) = 54m.

As a result, the proposal will utilise a measured exceedance for each tower specific to the relevant standard that applies. This Clause 4.6 Variation Request should be read in conjunction with the Amendment and Response to Submissions Report (Amendment Report) prepared by Ethos Urban.

Chapter 2, Part 2, Division 1 In-fill affordable housing of the Housing SEPP applies to the proposed Concept Masterplan due to the inclusion of on-site in-fill affordable housing. The proposed Concept Masterplan includes 10% of 120% of the RLEP 2014 mapped floor space ratio (FSR) as affordable housing¹, and is therefore eligible for 20% additional floor space and building height. In addition, *Chapter 3, Part 5, Division 3 Development standards* of the Housing SEPP applies to the proposed development due to the inclusion of seniors housing, including both independent living units (ILUs) and residential care facilities (RCFs). The proposed Concept Masterplan is therefore eligible for an additional 25% of the maximum permissible FSR, though this additional floor space must be used for the purposes of seniors housing. As the proposed concept masterplan will exercise both the additional affordable housing floor space and the additional seniors housing floor space, section 12A of the Housing SEPP applies, which limits the application of multiple additional floor space provisions to result in a maximum FSR of no greater than *130% of the maximum permissible floor space ratio for the land*.

As the masterplan proposes a publicly accessible open space approximately 1.1 ha in area (which is a key attribute of the amended scheme following State Design Review Panel (SDRP) guidance), the additional floor space permitted by the Housing SEPP, is constrained to the proposed future development lots. Accordingly, it is proposed to redistribute the floor space that would otherwise be placed in the area occupied by the proposed 1.1 ha public open space to other parts of the site. This redistribution results in height exceedances, but it allows for the retention of this public benefit while also achieving the delivery of affordable housing together with seniors housing.

Importantly, the application does not seek to exceed the maximum FSR that is permitted by the Housing SEPP, nor does it seek to maximise the FSR permitted. Specifically, given multiple additional floorspace provisions apply to the concept masterplan, section 12A of the Housing SEPP applies, limiting the additional floorspace to 130% of the maximum FSR for the Site. This maximum FSR is therefore 3.25:1. The proposed FSR equates to 3.104:1 which is significantly less than the maximum FSR contemplated for the site. In seeking less than the permitted FSR, the Applicant has prioritised amenity and appropriate contextual density, rather than seeking the maximum possible yield.

¹ The phrase "10% of 120% of the RLEP 2014 mapped floor space ratio (FSR) as affordable housing" is used to identify how the proposed quantum of affordable housing floor space is calculated. The total proposed FSR for the masterplan equates to 124% of the RLEP 2014 mapped FSR. However, the additional 4% (above 120%) is achieved through utilisation of the Housing SEPP additional seniors floorspace provision. As only an additional 20% is sought through the Housing SEPP affordable floorspace provision, the quantum of affordable housing is limited to 10% of 120% of the mapped RLEP 2014 FSR, and not 10% of the entire masterplan's FSR given that 4% reflects the additional floor space attributable solely to the provision of seniors housing and is only able to be used for that purpose.

Although the additional FSR and affordable housing contributions are calculated across the mixed-use development, the additional building height provided by cl 16(3) of the Housing SEPP only applies to residential flat buildings or shop top housing. This makes it virtually impossible to realise the full extent of FSR without seeking to vary the maximum building height in a mixed-use development. In other words, if all of the proposed buildings on the site were RFBs, then all would benefit from a maximum height of 54m. This outcome would not be in keeping with the strategic planning outcomes envisioned for the site, including the significant benefits that are able to be achieved through the proposed variety of land uses

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances to particular development. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the building 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 development standard. As such, this document satisfies the provisions of section 35B(2) of the EP&A Regulation.

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

With respect to clause 4.6(3)(a):

- The principles and objectives of the Housing SEPP, relevant to both in-fill affordable housing and seniors housing, as well as of the RLEP 2014 height control development standard, are achieved notwithstanding the height variation.
- Compliance with the development standard is unreasonable in the circumstances as it would undermine the efforts of the State Government to increase the affordable housing and seniors housing supply across NSW, particularly in a local government area with a recognised lack of diverse and affordable housing;
- The building height variation is necessary to facilitate the delivery of affordable and seniors housing within the project, utilising the Housing SEPP incentives in circumstances where there is no local planning requirement to deliver affordable and seniors housing. The variation therefore directly supports the significant social and economic benefits arising from providing affordable and seniors housing, and these benefits would not be realised in a development that complied with the building height development standard;
- The application aligns with the national and State planning policy objectives to deliver more housing, including affordable and seniors housing, in well-located areas supported by infrastructure. The building height variation arises from the use of additional floorspace that is intended via floor space and building height incentive provisions and complies with the Housing SEPP. In doing so, the proposal directly supports the provision of additional affordable and seniors housing, which is a significant public benefit that justifies this variation;
- The proposed massing strategy is appropriate with regard to the surrounding context and supports the strategic planning objectives outlined in various state and local plans (refer to **Section 2.2** below). The redistributed floor space has been carefully sited to minimise adverse environmental impacts on the locality and is informed by robust urban design analysis of the existing and future adjacent context to the Site. Notwithstanding this, the variation does not represent an exceedance nor a maximisation of permissible floorspace on the site (an FSR of 3.104:1 is proposed, where 3.25:1 is the maximum permitted); and
- The inclusion of an approximately 1.1 hectare (ha) public open space enhances the overall quality of the development by providing a valuable public benefit. In order to prioritise this public open space, the redistribution of floor space on other buildings ensures that the proposed concept masterplan can deliver affordable and seniors housing, whilst maintaining a balanced and sustainable urban design.

With respect to clause 4.6(3)(b):

- The proposed building height sits comfortably in its urban context and is compatible with the existing and envisioned future character of Macquarie Park. This alignment is consistent with the Macquarie Park Transit Orientated Development (TOD) accelerated precinct, which has recently been rezoned for significant growth. The varied building heights across the precinct create a dynamic range of bulk and scale, reducing visual

impact and enhancing visual permeability throughout the site. In contrast, uniform massing would result in an undesirable street wall effect when viewed from adjacent properties;

- The proposed concept envelopes have been sculpted to ensure compliance with the Apartment Design Guide (ADG) for solar access to adjacent residential developments as well as to future residential development within the proposed envelopes;
- The proposed planning envelope heights vary and include marker buildings, as achieving a diversity of built form, urban markers and gateways to the site and broader precinct, referencing the wider urban built form along Epping Road. These marker buildings are complemented by lower buildings, facilitating increased solar access to open space and residents; and
- There are sufficient environmental planning grounds to justify contravening the development standard as the proposal represents a high-quality urban design and built form outcome, provides an appropriate response to its site specific context and will maintain a high level of the amenity for surrounding and future residents. The redistributed floorspace enables slender building forms which creates additional opportunities for deep soil provision, tree canopy, and publicly accessible and communal open space, as well as delivery of affordable and seniors housing.

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.

1.2 Flexibility with Local Provisions

1.2.1 Affordable Housing

The Planning Circular (PS 23-003): *In-fill affordable housing under State Environmental Planning Policy (Housing) 2021* identifies that the uplift afforded under the Housing SEPP may compromise the ability for a development to strictly adhere with local controls in an LEP or Development Control Plan (DCP). The Planning Circular acknowledges the use of clause 4.6 to allow the flexible application of development standards, and consent authorities are '*reminded to consider the delivery of market housing and affordable housing when considering the social impacts and the public interest of a development*'.

While the above reminder to consent authorities is specifically in reference to utilisation of the additional height set out in the Housing SEPP (rather than exceeding height), given the specific circumstance of the proposal, which seeks to provide a substantial quantum of publicly accessible open space and deliver affordable housing, the same reminder to consent authorities applies.

The Affordable Housing Practice Note (the Practice Note) discusses the collaboration envisaged under the Accord, which aims to bring '*together all levels of government, investors, and the construction sector to unlock additional affordable housing supply over the medium term*'. Considering the above, and by virtue of this Clause 4.6 Variation Request, it is considered appropriate in the circumstances that the consent authority apply the local provisions flexibly, in order to balance local outcomes with the Government's policy intent to deliver more affordable housing.

The proposed height variation achieves delivery of 10% of 120% of the RLEP 2014 mapped FSR as affordable housing, which equates to a total floor space of 19,161m² or approximately 197 apartments (based on the reference scheme).

1.3 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 (upheld on appeal in *Randwick City Council v Micaul Holdings Pty Ltd* (2016) 225 LGERA 94); and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 Variation Request:

- Describes the site and proposed development (**Section 2.0**);
- Identifies the planning instrument and development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.1**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 4.2**).

2.0 Site and Proposed Development

2.1 Site Description

The BaptistCare site is a significant land holding with extensive street frontages to Balaclava Road and Epping Road (approximately 185m and 365m boundary length respectively). It accommodates several low to medium density seniors accommodation buildings that are connected via internal footpaths and lower order private roads. The existing RCFs are located towards the northern end of the site and the ILUs are located towards the southern end of the site and include the following:

- Residential care facilities providing various level of support including:
 - Cooina Court (68 rooms).
 - Dorothy Henderson Lodge (66 rooms, 14 dementia rooms).
 - Shalom Centre (132 beds).
- Willandra Retirement Village (130 independent living units).

Throughout the site there are various areas of passive open space, with well matured trees and vegetation scattered along the existing streets and between buildings. Towards the south-west fronting Epping Road, is a strata site identified as 'The Parkside' (legally described as SP9264) that does not form part of the site or proposed Masterplan, comprising high-density residential accommodation.

The site is strategically located directly south of Macquarie University, on the corner of Epping Road and Balaclava Road. It is surrounded by other residential and mixed-use developments including Morling College (with approved concept masterplan incorporating high-density residential development) and Macquarie park Village to the east. Other uses include commercial and education, as well as student accommodation and residential dwellings.

An aerial of the site is shown at **Figure 1**.



Figure 1 Site aerial

Source: Nearmap / Ethos Urban

2.2 Site and Planning Policy Context

2.2.1 Macquarie Park

The site is strategically significant and presents a unique opportunity to deliver affordable and private housing supply, seniors housing 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.

The Greater Sydney Region Plan identifies the Macquarie Park 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 while also intending to deliver a significant number of dwellings over the next 10-15 years, transforming the area into a vibrant residential and commercial 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.

In addition to the above, it is evident that there is a severe housing and affordability crisis within Greater Sydney and because of this, there is an urgent need for the government to deliver well-located housing. At both the Federal and State government levels, there has been a number of key initiatives implemented to assist in delivering more housing across NSW, including the following:

- **National Housing Accord**, which was adopted by the Federal Government in 2023 to deliver 1.2 million homes in the right locations within the next five years until 2029, with NSW expected to deliver at least a third of the target in order to cater for the population and demographic. Based on the current applications and future pipeline, the delivery of housing is tracking significantly behind and therefore, there is a strong need for more housing within Greater Sydney, including Macquarie Park;
- **Transit Orientated Development (TOD) Program**, which is a NSW Government initiative introduced by DPHI to deliver more housing within proximity to key transport nodes. Specifically, Macquarie Park is one of the eight accelerated precincts selected for State-Led Rezoning, which resulted in the following changes; rezoning of specific lots from E2 Commercial Centre zone to E3 Productivity Support, MU1 Mixed Use and RE1 Public Recreation; increase in the base maximum building height range from 9.5m – 37m previously, to 45m – 190m subject to certain incentive bonuses; and increase in the maximum base FSR from 1:1 – 3:1 previously, to 1.5:1 – 5:1 subject to certain incentive bonuses. These changes emphasise the clear intent and vision for the precinct to evolve into a high-density mixed-use precinct, leveraging off existing and future infrastructure; and
- **Housing Targets**, which were released by NSW Government for 43 Local Government Area's (LGA's) across Greater Sydney to respond to the National Housing Accord commitment to deliver 377,000 across NSW. The housing target established for the Ryde LGA is 11,600 new dwellings and it is important to note that it is one of the LGA's expected to deliver a greater proportion of housing. This target will assist in addressing the housing shortage and prioritise more diverse and well-located homes in areas with existing infrastructure capacity, such as transport, open spaces, schools, hospitals and community facilities.

It is clear that there is a strong demand and strategic push for additional housing within Macquarie Park, as it is a key centre that has the benefit of leveraging off existing infrastructure – irrespective of the housing targets established under the Ryde Housing Strategy.

The development will assist in activating the adjacent residential, education and commercial uses, through the introduction of diverse housing and complementary commercial space, enhancing the long-term viability of the greater precinct. Activation through a greater mix of uses will ultimately enhance the diversity of Macquarie Park and balance the perceived 'office park' character.

The proposed amended Concept Masterplan for the mixed-use development is a significant improvement to the site's current focus on low-density seniors accommodation and will assist in contributing to the National Housing Accord and the new targets established for Ryde by the NSW Government. It is well designed and well-located and therefore, will benefit a range of community members.

The Concept masterplan 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.

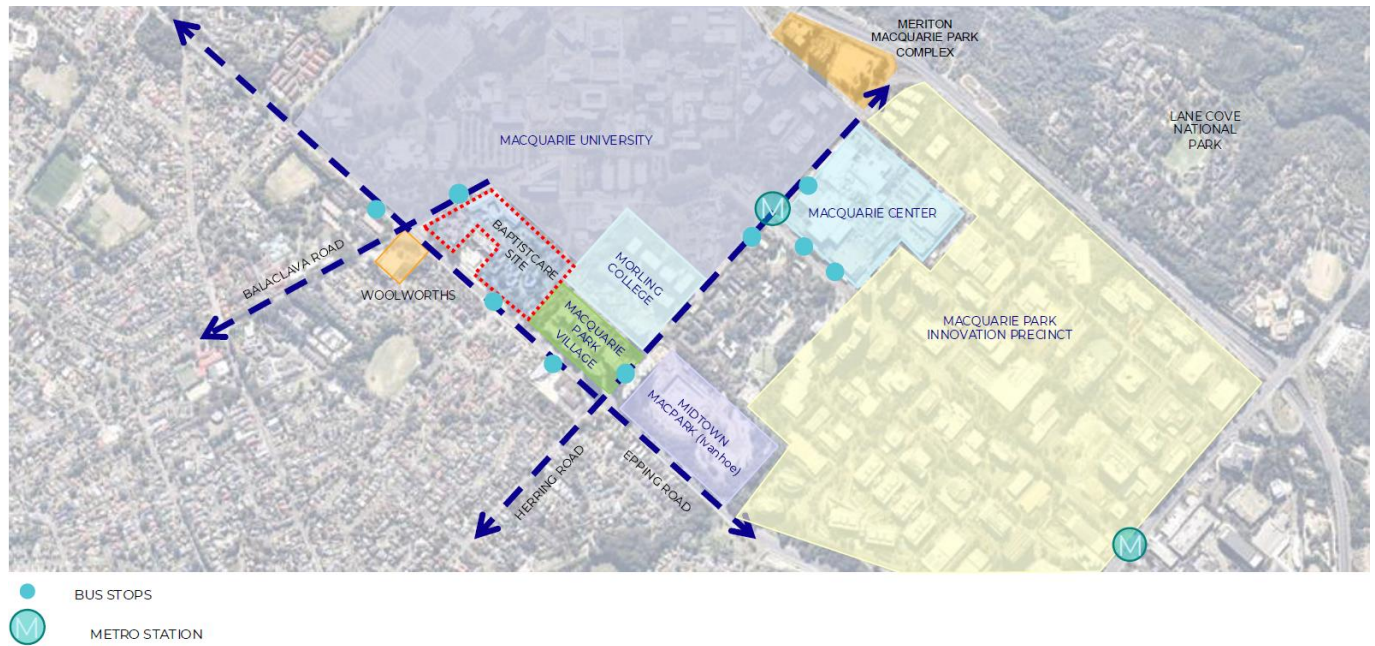


Figure 2 Site context

Source: BVN

2.2.2 Need for Affordable and Seniors Housing

Insufficient affordable housing in Macquarie Park

The City of Ryde Affordable Housing Policy 2016-2031 (April 2016) identifies that there is insufficient affordable housing in the City of Ryde. Planning intervention to deliver affordable housing across the LGA is warranted due to the loss and non-replacement of affordable housing through gentrification and redevelopment, particularly with regard to the current and projected degree of unmet housing needs.

The City of Ryde has established targets for affordable housing, noting that the local policy states that Council will seek to achieve an affordable housing target of 5% of new housing growth in the next 15 years to be affordable housing for key worker households. It is clarified that this is not a requirement for the subject proposal, but nonetheless reinforces that affordable housing provision is a high priority for Ryde Council.

The North District Plan also identifies an opportunity to provide additional housing supply in Macquarie Park, and the Ryde Housing Strategy includes planning for an additional 20,000-22,000 dwellings across the LGA by 2036. Access to co-living and affordable housing options will be particularly important given the high proportion of students and young people aged 25-34 years living in the City of Ryde.

This SSDA seeks to deliver 10% of 120% of the RLEP 2014 mapped FSR as affordable housing, which has been incentivised and facilitated through the provisions of the Housing SEPP. The floorspace accommodated within the redistributed massing and additional height proposed above the building height development standards is critical to facilitate delivery of affordable housing, and is therefore consistent with the local policy intent across the Ryde LGA.

Insufficient seniors housing in Macquarie Park

It is also a State Government priority to allow people to remain in their communities as they age², in environments which suit their needs and enable mobility and that have safe pedestrian links to transport and local facilities (refer to the Updated Social and Economic Impact Assessment at **Appendix Y** to the Amendment Report). The Ryde Housing Strategy also recommends Seniors' housing be located along train lines, which is the case for the subject site in relation to the Macquarie University Metro Station. The proposed diverse housing mix will also provide opportunities for intergenerational connections to be formed which has the potential for positive social, health and behavioural outcomes.

² Ageing well in NSW Action Plan 2023-2024, Department of Communities and Justice

It would be unreasonable to require strict compliance with the development standard in circumstances where such compliance directly undermines the alignment of the project with a key policy priority for all levels of government to increase the supply of affordable and seniors housing.

2.3 Description of the Proposed Concept Masterplan

The Applicant seeks consent for a Concept Masterplan which will guide the future redevelopment of the BaptistCare landholding to comprise seniors housing, residential accommodation (including affordable housing), commercial premises, recreation areas, and roads. As an overview, the proposed concept masterplan seeks consent for development envelopes, uses, floor space, and arrangement of development lots for:

- Seniors housing, including:
 - Residential care facilities (RCFs); and
 - Independent living units (ILUs).
- Residential accommodation, including:
 - Co-living housing (student accommodation);
 - Residential flat buildings; and
 - Shop top housing (including both commercial premises and health services facility)
- Affordable housing equivalent to 10% of 120% of the RLEP 2014 mapped FSR.
- Commercial premises.
- Recreation areas.
- Roads.

A site plan is provided in **Figure 3**.

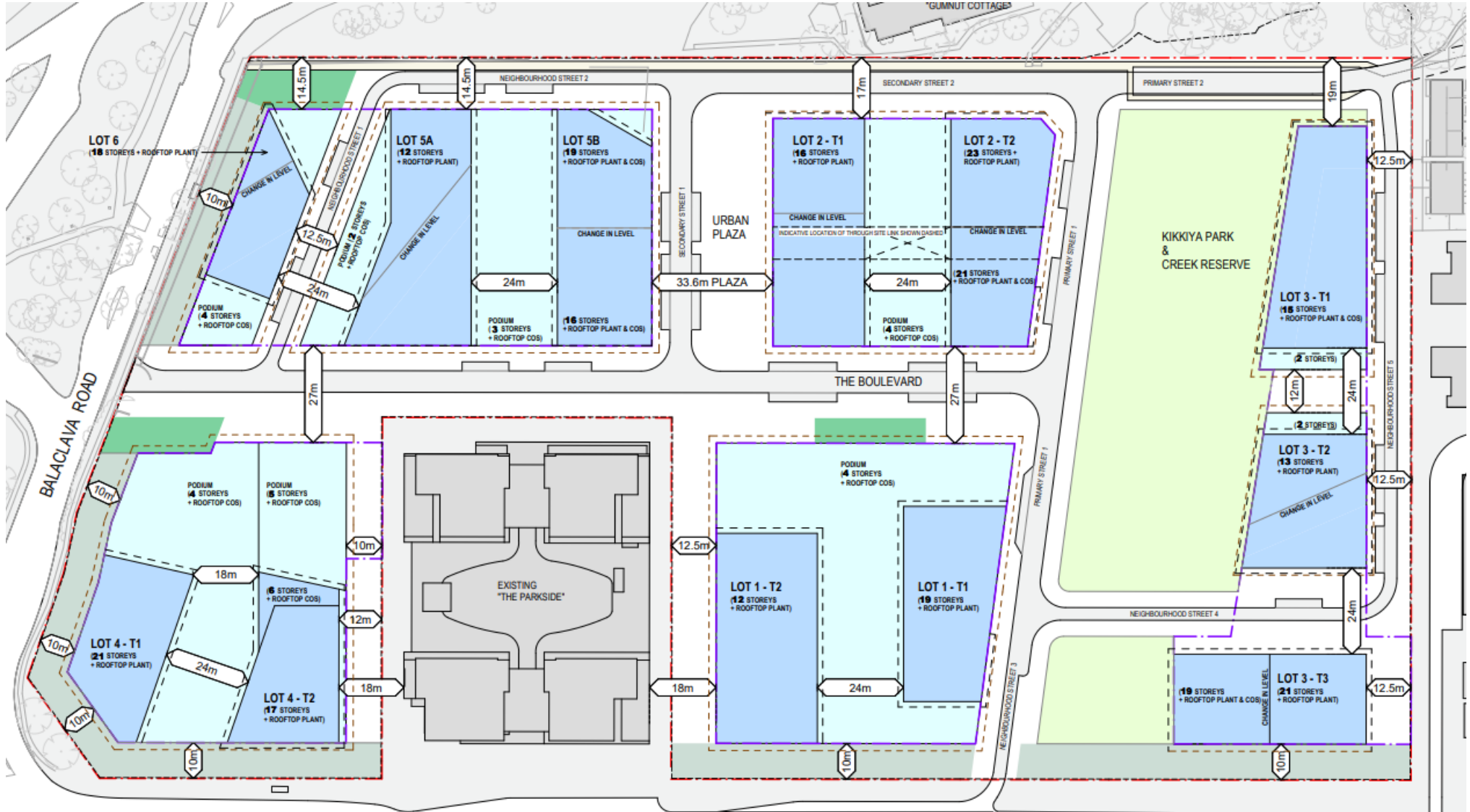


Figure 3 Proposed site plan

Source: BVN

3.0 Planning Instrument, Development Standard and Proposed Variation

3.1 Overview of Proposed Variation

A summary of the environmental planning instrument (EPI), development standard and proposed variation is outlined in **Table 1**.

A variation to building height is sought for each future development lot across the concept masterplan. The nature of the variation sought is discussed and illustrated below.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	Ryde Local Environmental Plan 2014
The site's land use zone	MU1 Mixed Use
Development standard to be varied	Clause 4.3 Height of buildings 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. (Refer also Housing SEPP provisions identified below this table.)
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI, pursuant to the maximum building height permissible under the RLEP 2014, clause 16 and clause 87 of the Housing SEPP (as applicable).	Co-living: 45m Seniors housing: 48.8m Residential flat buildings and shop top housing: 54m Map extract provided in Figure 4 .
Difference between the existing and proposed numeric values. Variation percentage between the proposal and the EPI	Refer to Table 2 for a detailed breakdown.
Visual representation of the proposed variation	Refer to Figure 5 .

The RLEP 2014 Height of buildings development standard identified in the table above states the objectives for that development standard, which will be addressed in this Variation Request. Notwithstanding this, where applicable to a proposed envelope's land use, the development standards to be varied is the maximum building height established by clause 16(3) and clause 87(2)(c) of the Housing SEPP, which state respectively (emphasis added):

16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an

additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{affordable housing component} = \frac{\text{additional floor space ratio (as a percentage)}}{2}$$

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

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 Chapter 5 or another environmental planning instrument, or

(b) the development is carried out on land in Zone E2 Commercial Centre or 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 1,500m², 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.

Therefore, the maximum building height development standard for each proposed envelope has been determined by the building height as mapped in **Figure 4**, plus:

- Pursuant to 16(3) of Housing SEPP, as 10% affordable housing is proposed to be accommodated in the concept masterplan, an additional 20% building height applied to shop top housing and residential flat buildings; and
- Pursuant to 87(2)(c) of the Housing SEPP, an additional 3.8m for seniors housing buildings.

The RLEP 2014 maximum height continues to apply to buildings that comprise neither seniors housing nor are residential flat buildings or shop top housing – in the case of the proposed concept masterplan, this applies to the co-living building.

The maximum permissible heights are thus summarised below:

- RLEP 2014: 45m (RLEP 2014 maximum height applicable to the co-living building envelope);
- RLEP 2014 + 3.8m (Seniors housing): 48.8m; and
- RLEP 2014 + 20% (Residential Flat Buildings and Shop top housing): 54m.

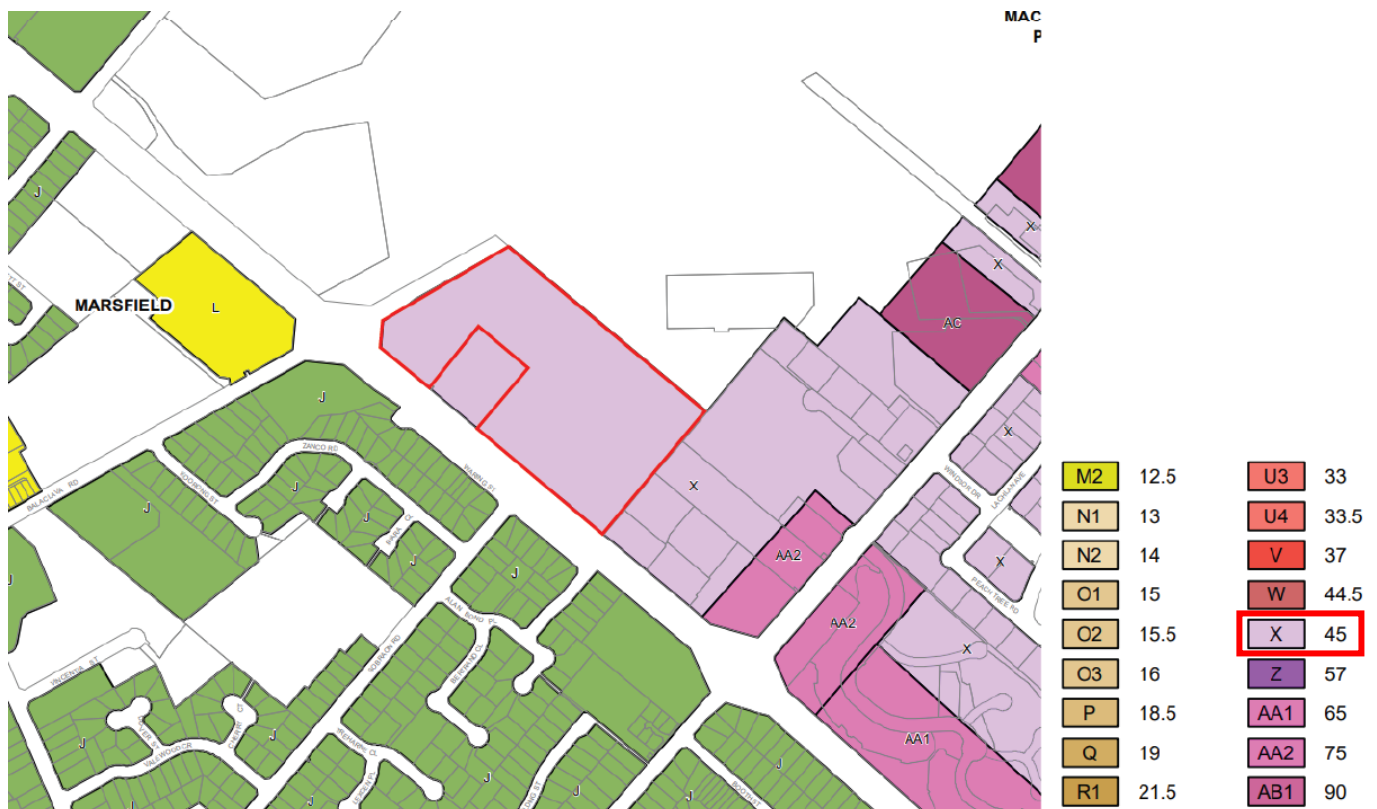


Figure 4 Excerpt from RLEP 2014 Height of Buildings Map (site outlined in red)

Source: City of Ryde via NSW Legislation

A height variation is sought for nine of the proposed twelve towers across the Masterplan, as outlined at **Table 2** below, and illustrated in **Figure 5**.

Table 2 Details of the proposed variation to building height

Development lot	LEP height	Use	Maximum building height	Proposed storeys	Proposed building height	Exceedance to maximum building height	Variation % to maximum building height	Overview of variation
Lot 1 T1	45m	Seniors housing	48.8m	20	70.7m	+21.9m	44.9%	6 storeys + plant. Approx. 16% of GFA in this lot is above the height plane.
Lot 2 T1	45m	Shop top housing (incl. affordable housing)	54m	17	63.1m	+9.1m	16.9%	2 storeys + plant. Tapered built form above 54m height plane. Approx. 22% of GFA in this lot is above the height plane.
Lot 2 T2	45m	Shop top housing (incl. affordable housing)	54m	24	86.5m	+32.5m	60.2%	9 storeys + plant. Marker building. Stepped built form above 54m height plane. Approx. 22% of GFA in this lot is above the height plane.
Lot 3 T1	45m	Residential Flat Building (incl.	54m	16	58.9m	+4.9m	9.1%	Plant and rooftop open space only. Approx. 11% of GFA in

Development lot	LEP height	Use	Maximum building height	Proposed storeys	Proposed building height	Exceedance to maximum building height	Variation % to maximum building height	Overview of variation
		affordable housing)						this lot is above the height plane.
Lot 3 T3	45m	Residential Flat Building (incl. affordable housing)	54m	22	77.6m	+23.6m	43.7%	6 storeys + plant. Marker building. Stepped built form above 54m height plane. Approx. 11% of GFA in this lot is above the height plane.
Lot 4 T1	45m	Seniors Housing	48.8m	22	72.7m	+23.9m	49%	6 storeys + plant. Marker building. Approx. 17% of GFA in this lot is above the height plane.
Lot 4 T2	45m	Seniors Housing	48.8m	18	60m	+11.2m	23%	3 storeys + plant. Approx. 17% of GFA in this lot is above the height plane.
Lot 5B	45m	Seniors Housing	48.8m	20	71.25m	+22.45m	46%	6 storeys + plant and rooftop open space. Stepped built form above 48.8m height plane. Approx. 13% of GFA in this lot is above the height plane.
Lot 6	45m	Co-living housing and Residential Flat Building	45m	21	72.6m	+27.6m	61.3%	6 storeys + plant. Marker building. Tapered built form above 45m height plane. Predominant characterisation is co-living, and therefore 16(3) does not apply. Approx. 28% of GFA in this lot is above the height plane.

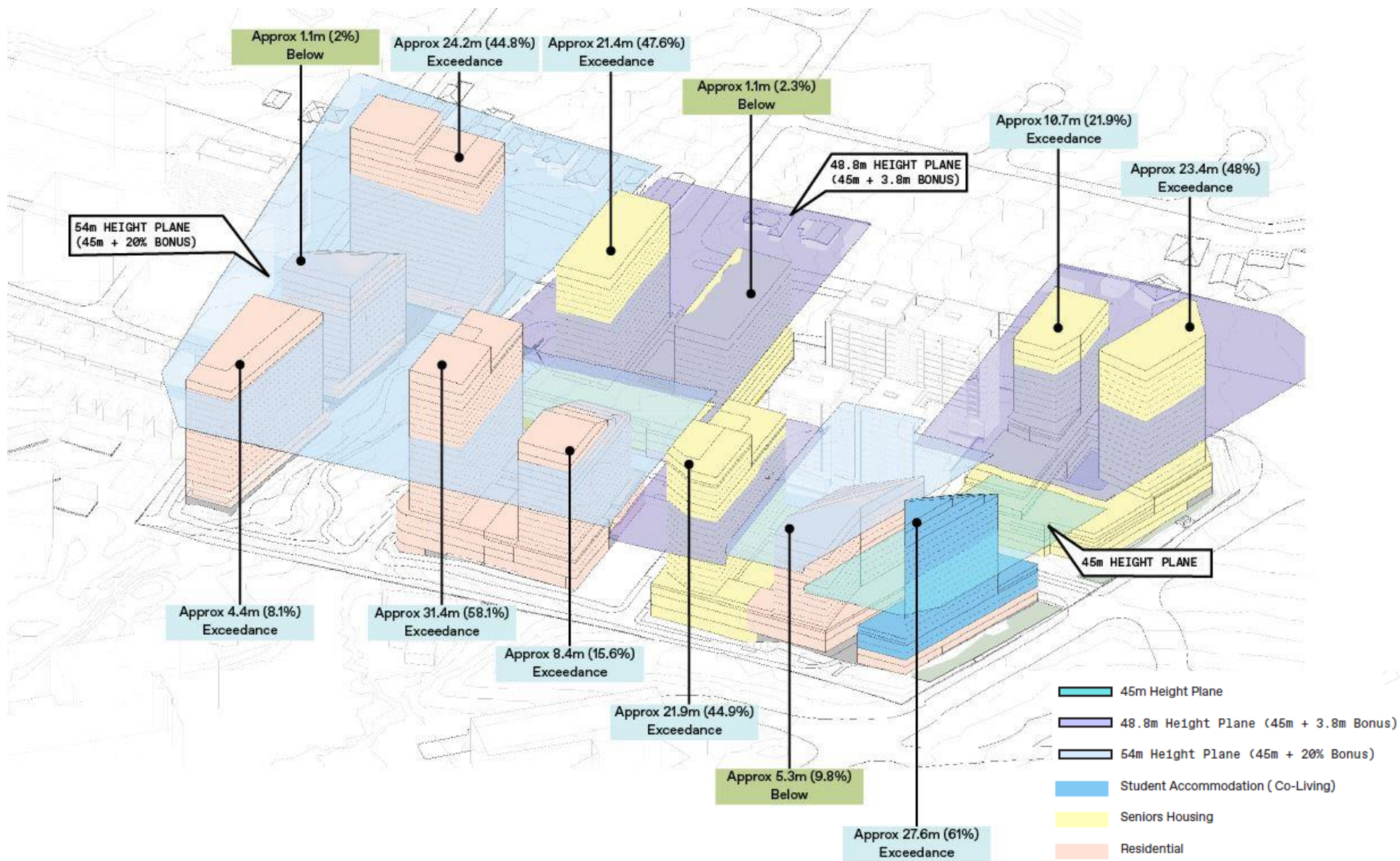


Figure 5 Site wide overview of proposed height variation

Source: BVN

3.2 Variation to the Height Standards arising from Application of the Housing SEPP Additional Floor Space

In-fill affordable Housing additional floor space

Chapter 2, Part 2, Division 1 of the Housing SEPP provides for additional height and floorspace for development that proposes to provide 10% of 120% of the RLEP 2014 mapped FSR as affordable housing. This is expressed as a percentage to be applied to the underlying building height and floorspace development standards expressed in the relevant LEP (the RLEP 2014 in this instance). The purpose of these provisions is to incentivise the delivery of more affordable housing in NSW by offsetting the cost of providing affordable housing by incentivising additional market housing that proposes to provide a component of affordable housing.

The RLEP 2014 does not currently require the provision of any affordable housing on the site.

This development proposes to deliver 10% of 120% of the RLEP 2014 mapped FSR as affordable housing pursuant to clause 16 of the Housing SEPP, and in doing so, the site is eligible for 20% additional floor space and building height (while the floor space applies to the masterplan as a whole, the height can only be applied to residential flat buildings and shop top housing) (refer footnote on Page 6).

Seniors Housing additional floor space

Chapter 3, Part 5, Division 3 of the Housing SEPP provides for additional height and floorspace for a seniors housing development that includes either or both a RCF and ILUs. In the case of the proposed masterplan, the seniors housing component includes both. In doing so, the site is eligible for an additional 3.8m above the maximum permissible building height, for the seniors housing buildings.

As the seniors housing component includes both RCFs and ILUs, under the Housing SEPP, a variation to the FSR from the RLEP 2014 of up to 25% can be made, used for seniors housing.

Combination of additional floor space

As the proposed concept masterplan will exercise both the additional affordable housing floor space and the additional seniors housing floor space, section 12A of the Housing SEPP applies, which limits the application of multiple additional floor space provisions to result in a maximum FSR of no greater than *130% of the maximum permissible floor space ratio for the land*.

As such, the proposed development will utilise the additional 20% affordable housing floor space and limit the 25% additional seniors housing floor space to 10% (equating to 30% total additional floor space across the site). Notwithstanding this, the proposed development does not seek to maximise the 130% FSR allowance and proposes a total FSR of 124% of the RLEP 2014 standard.

In order to deliver the additional floor space facilitated by the Housing SEPP (to enable delivery of affordable housing and seniors housing), while still delivering over 1.1 ha of recreation area for the wider community, it is proposed to redistribute the additional floorspace to slender towers, in a manner informed by rigorous urban design analysis. This results in height variations greater than those permitted by the Housing SEPP and RLEP 2014, therefore requiring reliance on clause 4.6 to vary the height standard.

This urban design outcome is illustrated in the steps outlined below:

1. LEP building height compliant scheme

BVN has produced a building height compliant scheme for comparison with the proposed masterplan. This scheme does not exceed the maximum permissible height (facilitated by the Housing SEPP and the RLEP 2014). As illustrated in **Figure 6** below, the distribution of the amount of floor space required to deliver the affordable and seniors housing on the site requires discrete buildings to be located across all parts of the site, negating opportunity for open space.

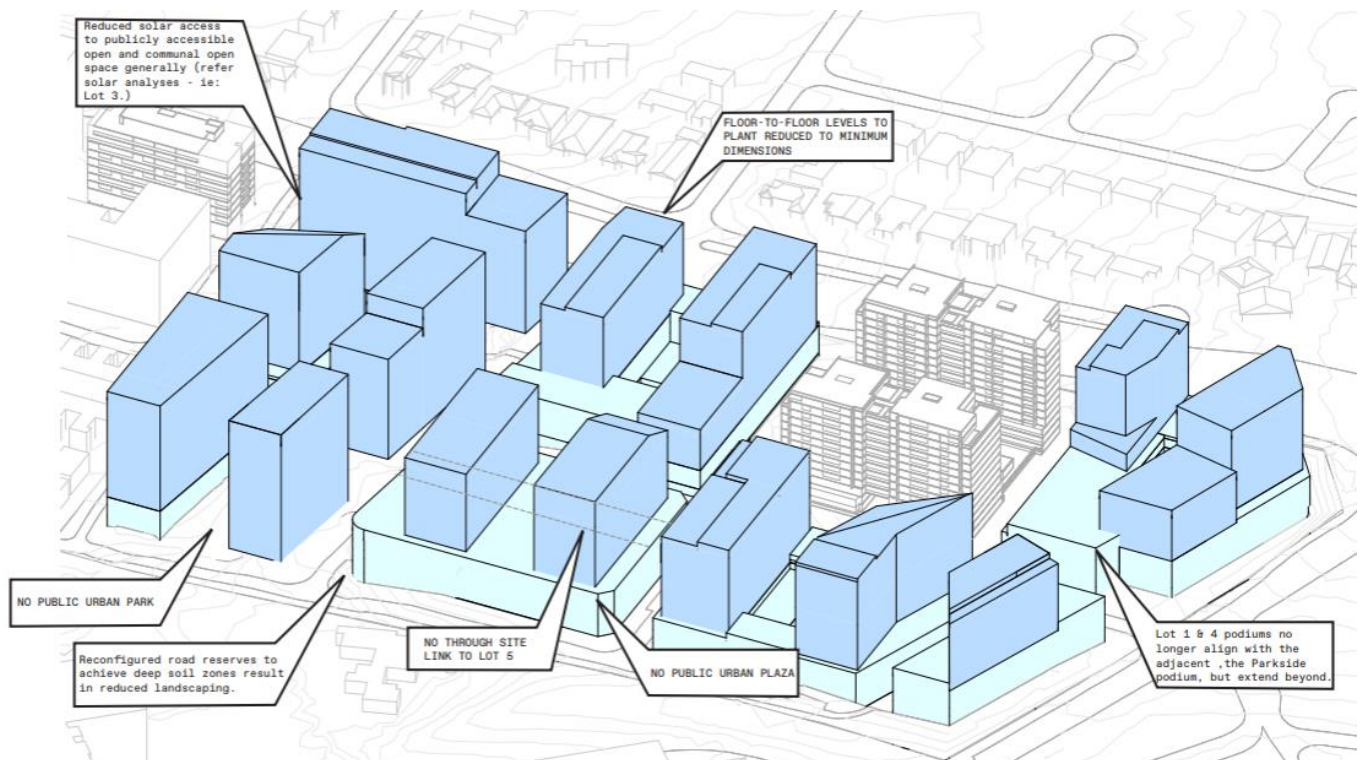


Figure 6 Building height compliant scheme

Source: BVN

2. Redistribution of floor space to accommodate the significant public open space

The redistribution of floor space to create a significant public open space, as well as respond to urban design analysis (refer to **Figure 7**), ensures a better alignment with the existing and future context of the site. The redistributed mass results in a diversity of slender tower forms, illustrated in **Figure 9**. Importantly, the tower forms have been sculpted to provide direct solar access to existing neighbouring residential development (in particular, The Parkside and Macquarie Park Village), as well as the future residential development on site. This is illustrated in **Figure 8** and is discussed in detail in this Variation Request.

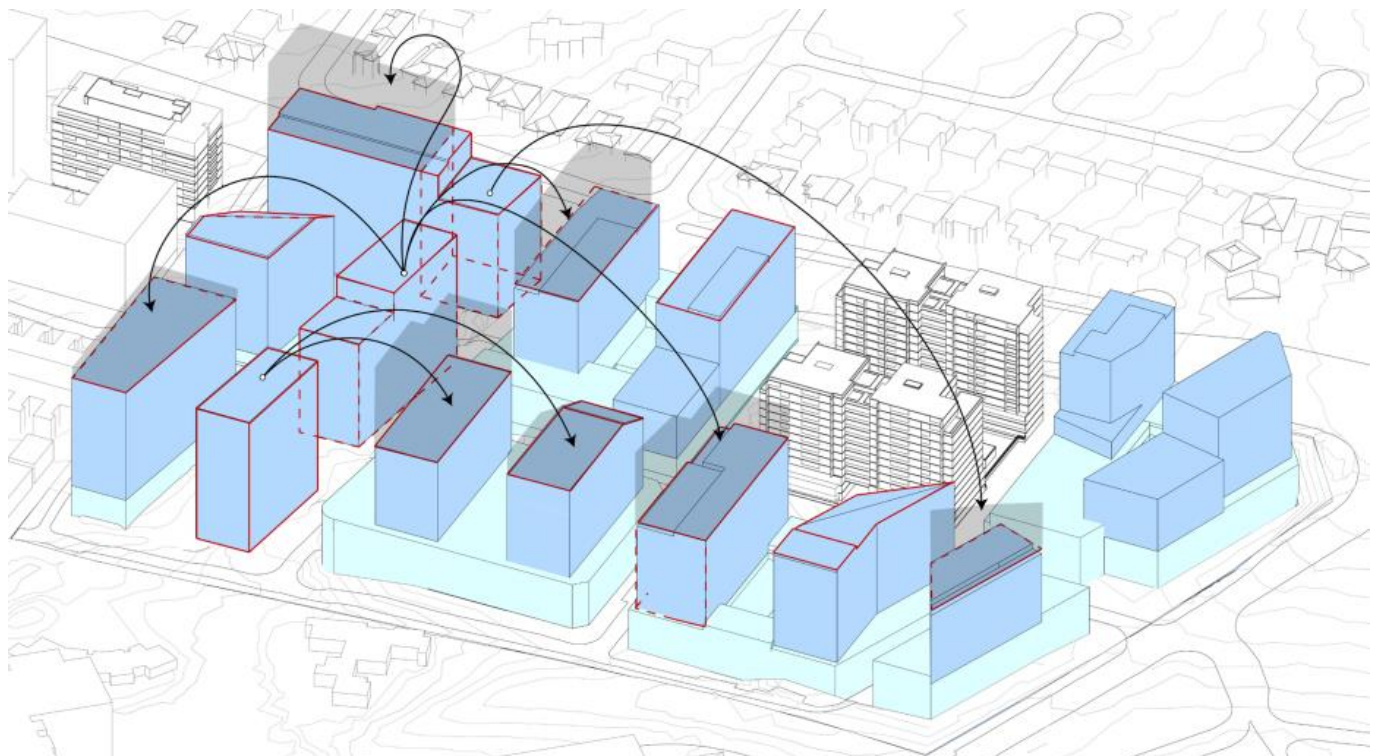


Figure 7 Redistribution of floor space

Source: BVN

3. Solar sculpting of the concept envelopes to mitigate overshadowing to existing neighbouring dwellings

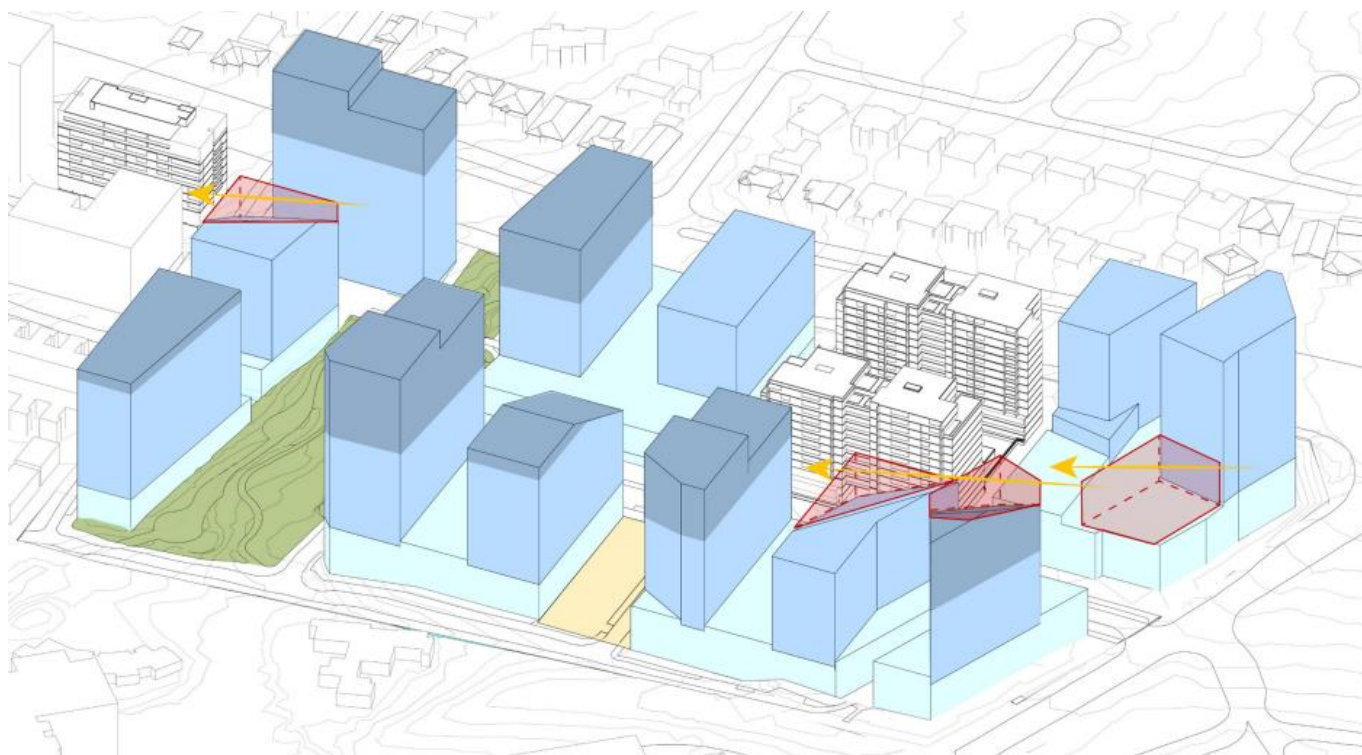


Figure 8 *Solar sculpting of towers*

Source: BVN

4. The resulting current proposed Concept Masterplan

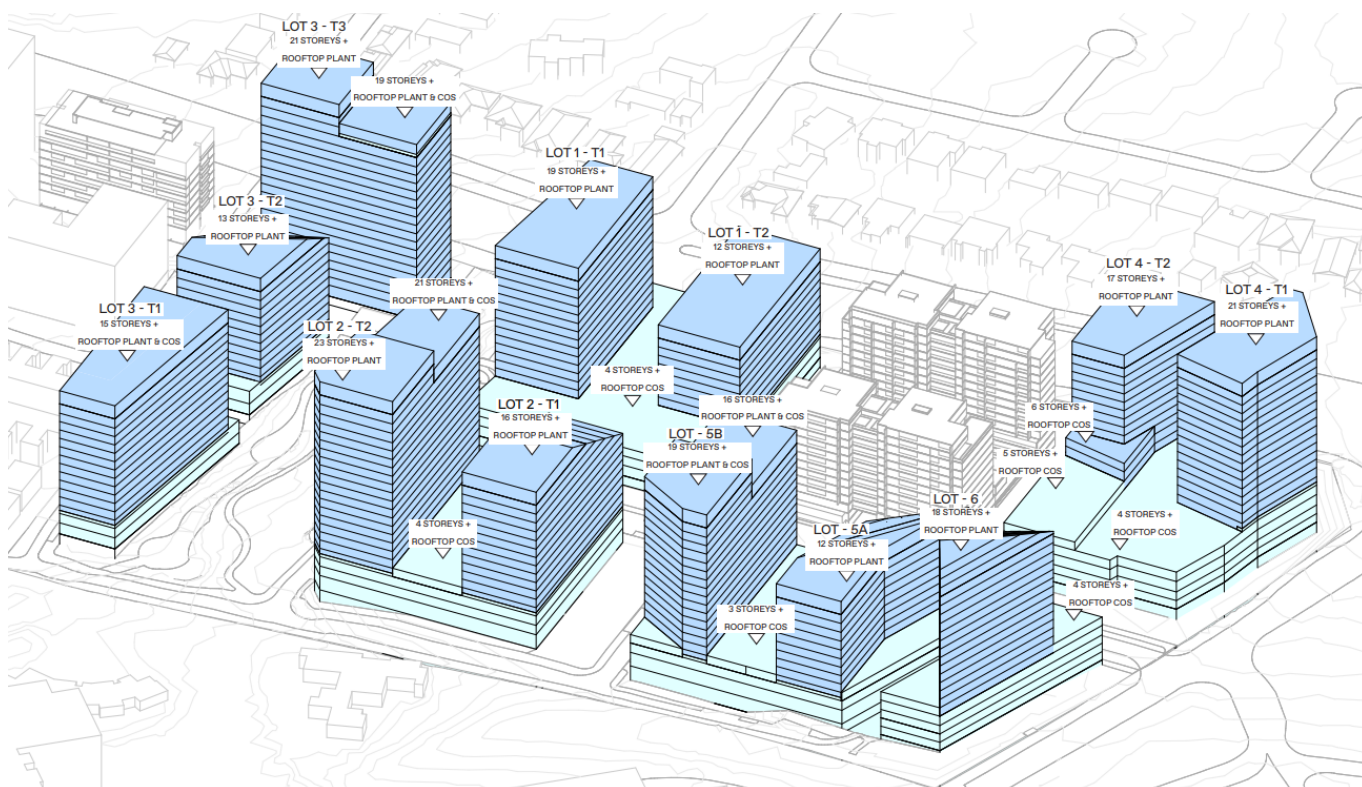


Figure 9 *Proposed concept masterplan envelope arrangement*

Source: BVN



Figure 10 *Proposed masterplan visualisation*

Source: BVN

4.0 Justification for Contravention of the Development Standard

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

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*); and
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*).

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

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

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

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

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 building height development standard pursuant to the **First Method** and **Third Method**.

First Method

4.1.1 The underlying purpose of section 16 (in-fill affordable housing) of the Housing SEPP is achieved notwithstanding non-compliance with the standard (First Method)

The objective of Division 1 In-fill affordable housing of the Housing SEPP is to *'facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.'* Notwithstanding the proposed height exceedance to the concept envelopes that will comprise the affordable housing floor space (the residential flat buildings and shop top housing), the objective to deliver affordable housing is met. Further, if strict compliance with the maximum building height was applied by the consent authority, as demonstrated in the compliant height scheme discussed in detail in **Section 4.1.4** below, to achieve delivery of affordable housing, floor space would be required to be located within the proposed Kikkiya Park. Development volume located in this area would present significant flood risk to residents, would eliminate open space that is needed for a large-scale community precinct, and would represent a poor urban design outcome. Alternatively, if Kikkiya Park was to be retained and the height exceedance was not supported, the loss of floor space achieved in the exceeding height would compromise (and render economically unviable) delivery of affordable housing on the Site. With exceeding height, therefore, the underlying objective of the in-fill affordable housing provision is considered to be achieved. Greater detail is provided in **Section 4.1.4** below.

4.1.2 The underlying purpose of section 87 (seniors housing) of the Housing SEPP Affordable Housing is achieved notwithstanding non-compliance with the standard (First Method)

There are no specific objectives contained within Part 5 or section 87 of the Housing SEPP, however the underlying purpose of the provision is implied in the section itself. Namely, to incentivise seniors housing in zones where residential flat buildings or shop top housing is permitted where sites are 1,500m² or greater. This is achieved via differing and more generous FSR standards applying to independent living units (ILUs) (15%), residential care facilities (RCFs) (20%), or ILUs + RCF (25%), and in order for a development to utilise the applicable FSR standards, a greater building height development standard is prescribed, being 3.8m (or 1 storey) above the 'maximum permissible building height' (as defined in the Housing SEPP).

The proposed development utilises the FSR and building height development standards in section 87 of the Housing SEPP, for the seniors housing building envelopes, which is intended to incentivise seniors housing for the purposes of RCFs and ILUs. In the same manner as discussed for the in-fill affordable housing above, notwithstanding the proposed height exceedance to the concept envelopes that will comprise the seniors housing floor space, the objective to deliver RCF's and ILU's is met. Further, if strict compliance with the maximum building height was applied by the consent authority, as demonstrated in the compliant height scheme discussed in detail in **Section 4.1.4** below, to achieve delivery of the proposed quantum of seniors housing, floor space would be required to be located within the proposed Kikkiya Park. Development volume located in this area would present significant flood risk to residents, would eliminate open space that is needed for a large-scale community precinct, and would represent a poor urban design outcome. Alternatively, if Kikkiya Park was to be retained and the height exceedance was not supported, the loss of floor space achieved in the exceeding height would compromise (and render economically unviable) delivery of seniors housing on the Site. Importantly, BaptistCare is able to deliver the proposed quantum of seniors housing with support economically from delivery of complementary uses and housing types on other parts of the Site. With exceeding height, therefore, the underlying objective of the seniors housing provision is considered to be achieved. Greater detail is provided in **Section 4.1.4** below.

4.1.3 The Principles of the Housing SEPP policy are achieved notwithstanding variation to the RLEP 2014 height development standard (First Method)

The underlying purpose of the Housing SEPP's section 16 (to deliver affordable housing), section 87 (to deliver seniors housing) and the Principles of Policy under the Housing SEPP are achieved notwithstanding the exceedance with the building height standard. Strict compliance (delivery of 124% of the maximum permissible floor space without exceeding the maximum permissible height) would result in an exceedingly dense built form arrangement, lacking any meaningful open space, which is contrary to the Housing SEPP Principles as discussed in **Table 3** below.

Table 3 Consistency with Section 3 Principles Policy

Principles of Policy	Assessment
(a) enabling the development of diverse housing types, including purpose-built rental housing,	The site is zoned MU1 Mixed use which anticipates high density housing, and the proposal meets the objectives of the zone and Principles 3(a) and (b) by increasing the provision of “diverse housing types” by providing affordable housing and allowing the existing community to live close to their employment (despite income) and age in place, and will meet the expected market penetration for affordable and seniors housing within the City of Ryde LGA. The proposal is in turn consistent with the purpose of the Policy given it seeks to provide additional affordable housing and seniors 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,	Strict compliance with the building height development standard would result in either a very poor urban design outcome (with very limited publicly accessible open space), or the loss of future development delivering affordable housing. Removing floor space would thwart the underlying purpose of the Principles of Policy as it would not encourage affordable and seniors housing, nor promote its delivery.
(c) ensuring new housing development provides residents with a reasonable level of amenity	Given sculpting of the concept envelopes, and limiting some envelopes to be below the maximum building height development standard, the proposed concept 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. The concept masterplan has been vigorously tested with an indicative reference scheme which demonstrates an appropriate distribution of GFA within concept envelopes throughout the site. The reference scheme, and with respect to the overall building mass proposed, satisfies the objectives of the building height development standard, notwithstanding the numerical non-compliance.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	The proposal is located in a strategically significant precinct that has been identified for greater housing density by such reforms as the State Government’s Macquarie park TOD (which does not include the subject site), and presents a unique opportunity to deliver affordable and private housing supply, seniors housing and student accommodation in close proximity to key transport infrastructure, services and employment within Macquarie Park. Specifically, the site has clear connections to regular public transport services in the form of bus services and the Macquarie University metro station. The exceedance to the building height development standard does not impact the proposed development’s alignment with Principle 3(d).
(e) minimising adverse climate and environmental impacts of new housing development,	The proposed development, inclusive of the additional height proposed above the building height development standards, remains aligned with Principle 3(e). The ESD initiatives provided in report prepared by Atelier Ten at Appendix U to the Amendment Report details the proposal’s commitment to minimising climate and environmental impacts.
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	In accordance with 3(f), the proposed development, inclusive of additional height proposed above the building height development standards, has been designed with regard to the existing and future development of the area, changing character of the locality and the Principles of Policy.
(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.	Principles of Policy (3) (g) and (h) are not applicable to the proposed development as they relate to development for the purposes of build to rent, short term accommodation and affordable rental housing. Therefore, the proposed development is consistent with the relevant Principles of Policy of the Housing SEPP without needing to achieve all principles.
(h) mitigating the loss of existing affordable rental housing.	

4.1.4 The objectives of clause 4.3 of the Ryde LEP are achieved notwithstanding non-compliance with the standard (First Method)

The above analysis demonstrates that the principles of the Housing SEPP are achieved notwithstanding the variation to the development standard. Whilst not pertinent to the height variation of the seniors housing,

residential flat building and shop top housing envelopes (the latter two of which comprise affordable housing), a consideration against the objectives of the height development standard in clause 4.3 of the RLEP 2014 is provided below.

This further reinforces that the objectives of the Housing SEPP standards are achieved (and provides support to section 87 of the Housing SEPP as it does not contain specific objectives).

Further, as the co-living housing envelope also includes a height exceedance, and as there is no Housing SEPP provision for co-living housing in relation to height, consideration of this exceedance against the objectives of the RLEP 2014 development standard for height of buildings is required.

The below therefore considers the proposed masterplan, and each proposed concept envelope holistically.

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

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

The concept masterplan seeks consent for a mixed-use development that has been vigorously tested with a reference scheme that demonstrates an appropriate distribution of GFA within concept envelopes throughout the site. The concept envelopes, and with respect to the overall building mass proposed, satisfies the objectives of the building height development standard, notwithstanding the numerical non-compliance.

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

The height limit for the site was 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 (dated May 2015), 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; and
- Add definition and legibility to the Herring Road precinct as part of Macquarie Park.

Alongside the Herring Road Finalisation Report, the Macquarie Park Transit-Oriented Development (TOD) State-Led Rezoning Program underscores Macquarie Park's strategic location, which is well-served by transportation infrastructure and essential amenities. Prior to this rezoning, the maximum building height within the precinct ranged from 9.5m to 37m. However, under the TOD Program, the maximum building height has been significantly increased to between 45m and 190m. This proposed change aims to accommodate the area's anticipated growth and development, ensuring that Macquarie Park continues to thrive as a vibrant and accessible urban hub.

The proposed concept masterplan aligns with the Herring Road Finalisation Report and TOD Program as it will locate additional built form within the 'marker buildings' as illustrated in **Figure 11**, which have been strategically located. These marker buildings demarcate gateways to the site and greater precinct, adding legibility and activation, as well as referencing the wider urban built form within the Macquarie Park precinct. While the proposal seeks 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. Specifically, the marker buildings will achieve the following acting as:

- **Marker 1:** defines the corner of the site as perceived from Epping Road;
- **Marker 2:** defines the corner of Balaclava Road and Epping Road, establishing a key corner through the linking of Epping Road to Macquarie University. The building is also positioned at the end of the vista when viewed from Macquarie University;

- **Marker 3:** defines the corner of Balaclava Road and the proposed northern road, identified as Bluegum Way. This building, together with Marker 1, forms the eastern part of the gateway to Macquarie University; and
- **Marker 4:** establishes a key visual and pedestrian connection from the site from Macquarie University. This building also forms a key corner to Kikkiya Park.

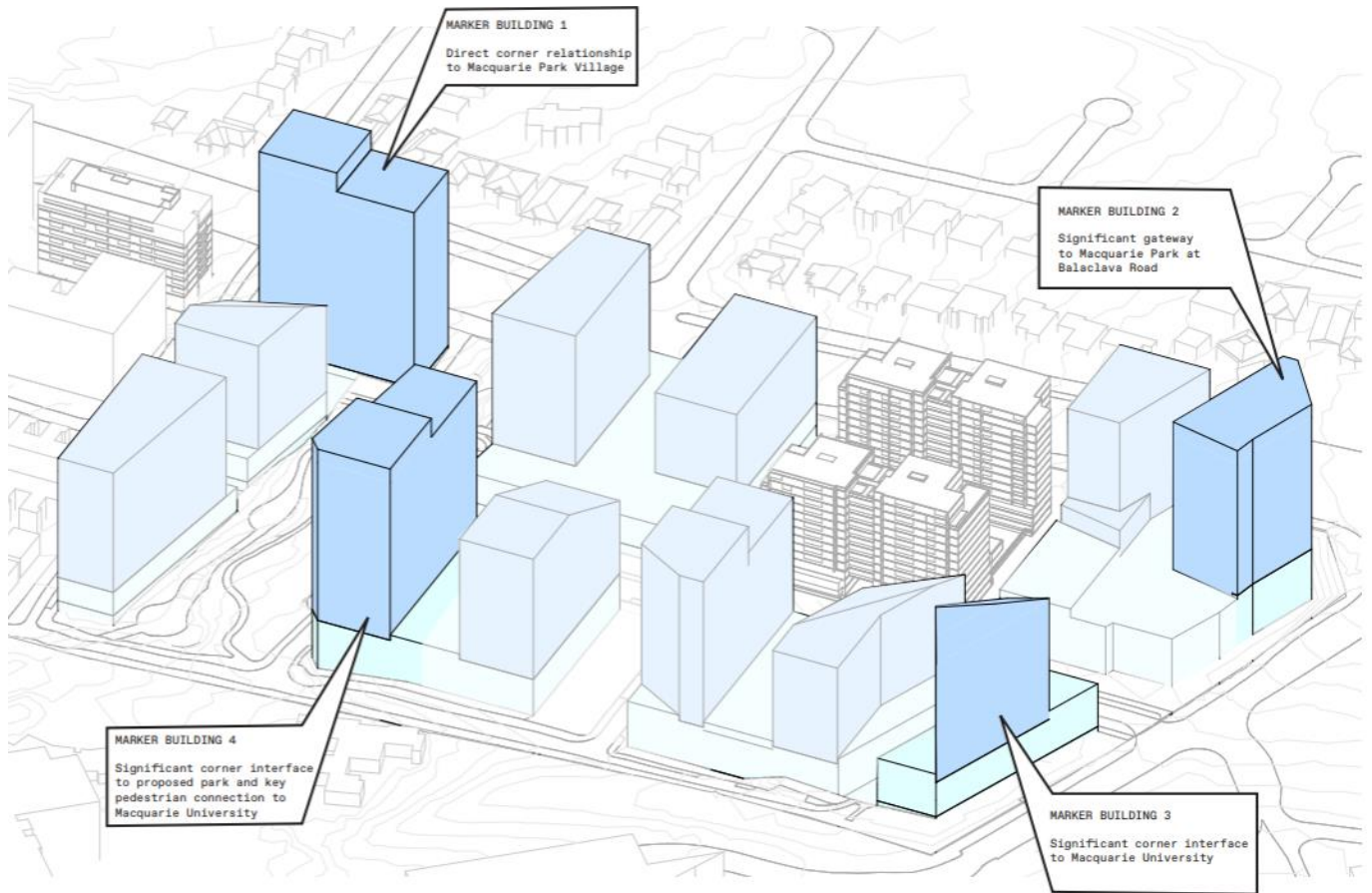


Figure 11 *Proposed marker buildings*

Source: BVN

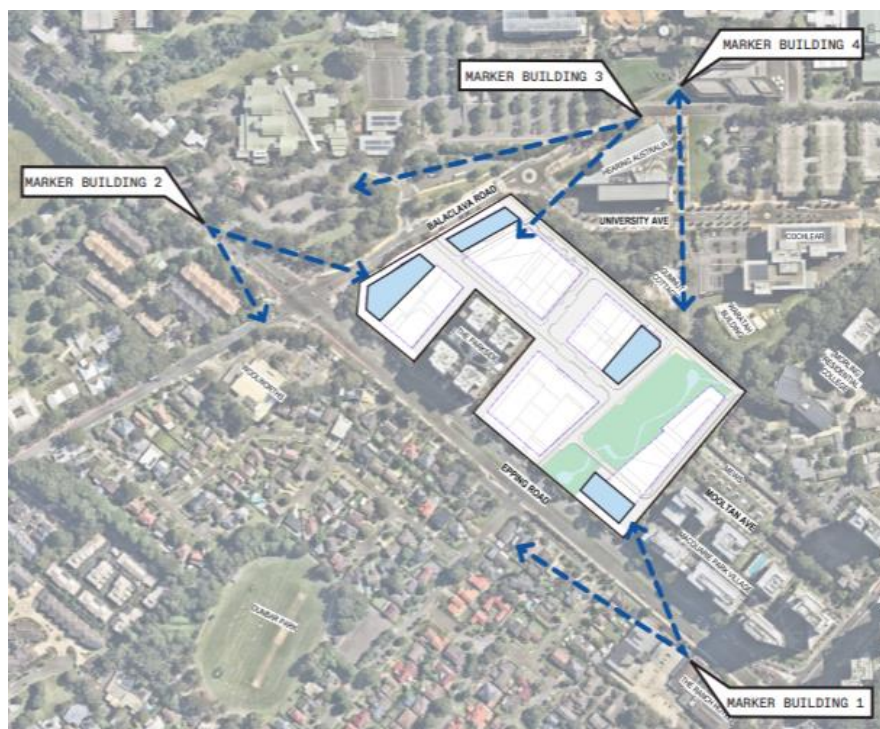


Figure 12 *Contextual location of proposed marker buildings*

Source: BVN

Compatibility with the character of the locality

The decision in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* provides guidance on 'compatibility' with surrounding development. The Court provided the following guidance relevant to this variation request:

- The most apposite meaning [of 'compatible'] in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve (at [22]);
- There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. (at [23]);
- There are urban environments that are so unattractive that it is best not to reproduce them. (at [23]);
- Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked:
 - Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites; and
 - Is the proposal's appearance in harmony with the buildings around it and the character of the street? (at [24]).
- Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape. (at [27]).

The urban context of Macquarie Park is generally characterised by a high density typology in transition to lower density, as identified in the street frontage elevations at **Figure 13** to **Figure 15**. As illustrated by the analysis of major developments, which includes existing, exhibited and approved developments along Epping Road, there is a noticeable stepped form in heights increasing towards the centre of Macquarie Park. Utilising this analysis, the proposed concept masterplan was amended with consideration to its present and future urban context, accounting for the relevant planning approvals and future developments in the surrounding urban context. As such, the proposed concept masterplan demonstrates a compatible approach to building height, varying across the site.

As illustrated in the street frontage elevations at **Figure 14** and **Figure 15**, the proposed concept masterplan achieves diversity of built form with clear breaks for open space between envelopes. Conversely, the uniform height of the building height compliant scheme shown in **Figure 14** presents a stark lack of diversity in form along the Epping Road street frontage and does not offer the relief achieved through delivery of expansive open space on the site.

Buildings fronting Epping Road vary in street frontage height from approximately 72m to 78m as illustrated by the dashed red line in the aforementioned Figures. In this context, the height exceedance is considered acceptable for the following reasons:

- Compatibility with the scale of buildings that are approved, under construction or recently completed along Epping Road and therefore the marker buildings on site are in keeping with the established and future character for Macquarie Park along Epping Road and when viewed from the lower density areas adjacent;
- The urban form on the site has been scaled and located to provide diversity and open space relief while enabling a series of smaller buildings in appropriate locations that enhance the public domain rather than a homogenous repetition of the same scale of buildings across the site (without open space); and
- The buildings comply with the minimum building separation and setback distances required by the Housing SEPP and Ryde Development Control Plan 2014 (RDCP 2014) as illustrated in **Figure 3** above, enabling residential amenity and enhancements to the public domain in the form of landscaping and open space.

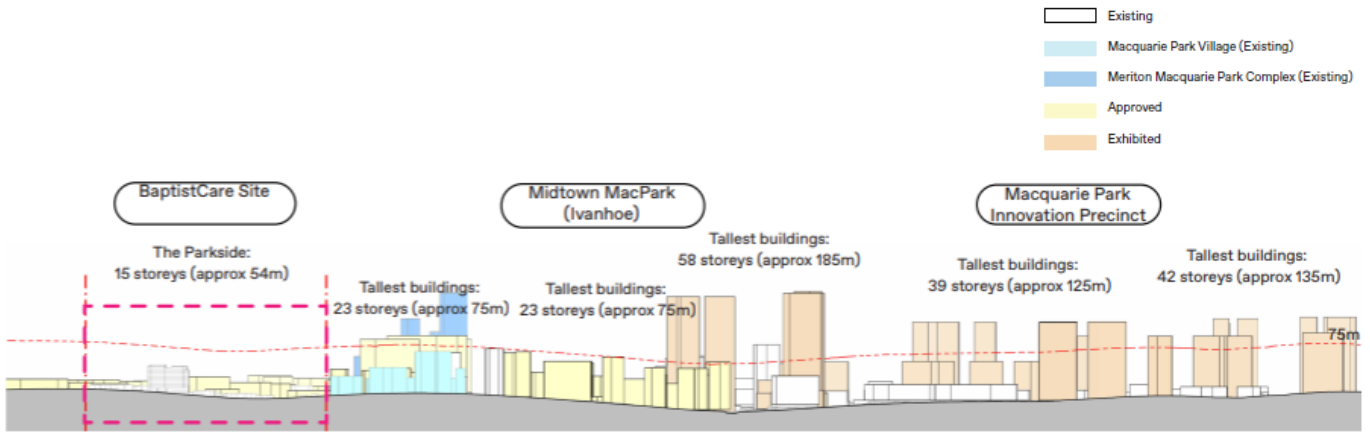


Figure 13 Epping Road elevation without proposal (existing, approved and exhibited)

Source: BVN

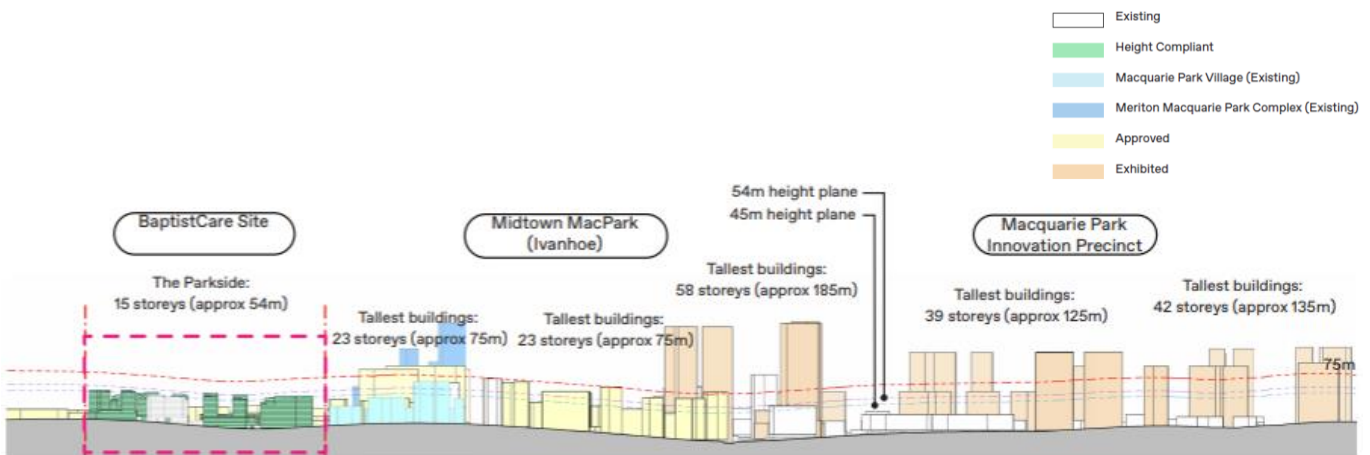


Figure 14 Epping Road elevation with building height compliant envelopes (existing, approved and exhibited)

Source: BVN

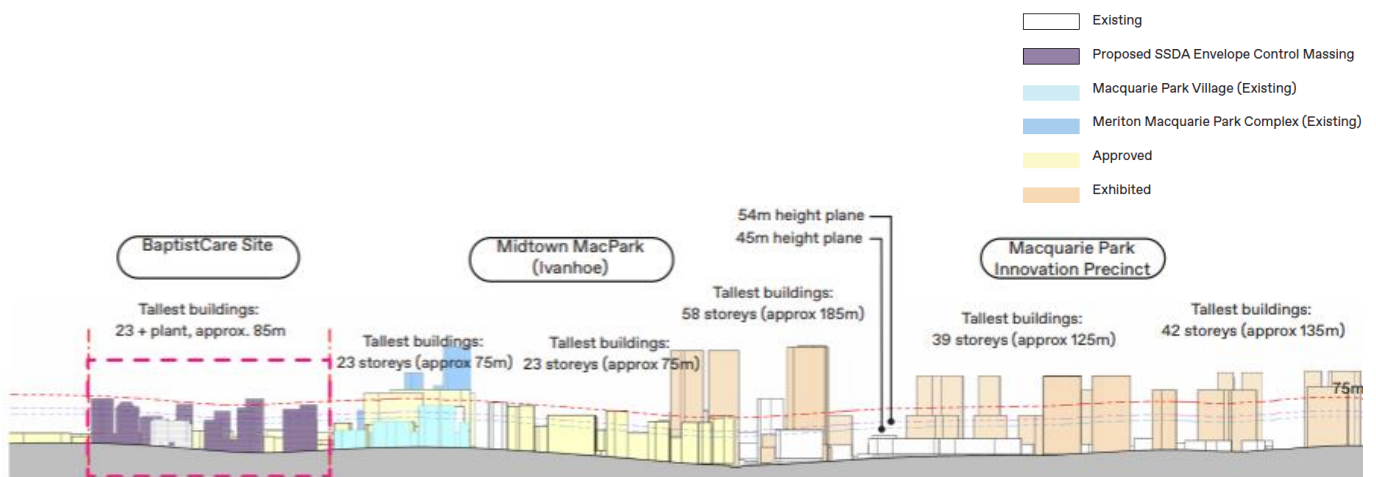


Figure 15 Epping Road elevation with the proposal (existing, approved and exhibited)

Source: BVN

The Macquarie Park Precinct is illustrated in **Figure 16** below, with existing development shown on the BaptistCare site. This diagram illustrates existing buildings, approved developments, and exhibited concept envelopes, providing a comprehensive view of the surrounding urban environment. It highlights the wide variety of heights across the precinct.

Notably, to the north and east, the maximum building heights approved and exhibited are substantially greater or commensurate to the proposed heights across the site, including:

- Meriton Park Complex: existing maximum height of **193m**;
- Macquarie Park Innovation Precinct: exhibited maximum height of **185m**;
- Macquarie University: approved maximum height of **120m**;
- Macquarie Park Village: approved maximum height of **75m**; and
- Midtown Macpark: approved maximum height of **75m**.

In this context, it is clear that the building height compliant scheme illustrated in **Figure 17** is uncharacteristic, and the solidity of a uniform height without open space relief is inconsistent with the diversity of built form in the greater precinct. Conversely, in **Figure 18** the thoughtfully considered urban design is characteristic of the context, articulating a diversity of built form comprising slender towers, with visual relief achieved through expansive open space.

This is further evident upon review of the future development massing, with architectural articulation, in the future built context as illustrated in **Figure 19** and **Figure 20**. These illustrations identify that future development, contained within the proposed envelopes, is commensurate to adjacent existing and future development in the Macquarie Park precinct. Importantly, these illustrations express an architectural outcome that results from the proposed tapered envelopes (designed to retain existing neighbouring solar access), which reinforces the diversity of height and form resulting from the proposal. The outcome is a balanced diversity in the skyline, where neither height nor constrained uniformity is prioritised.

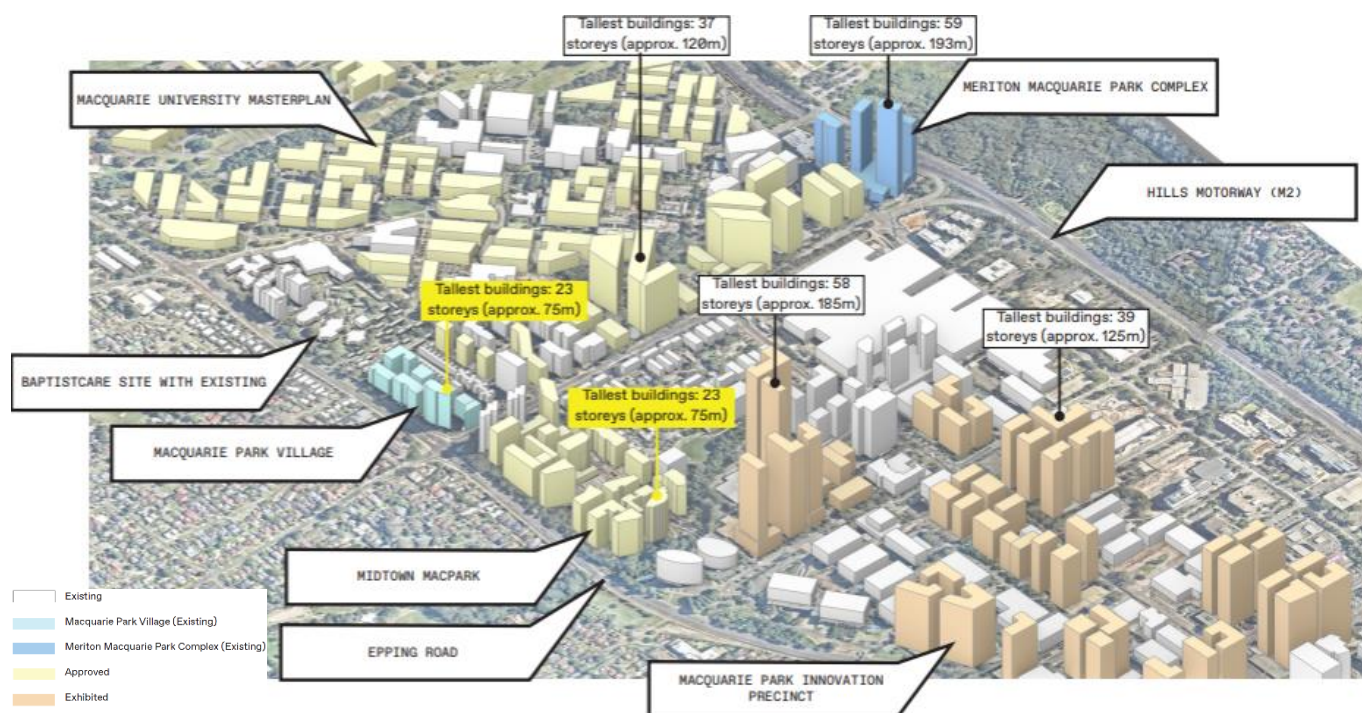


Figure 16 Macquarie Park future context (existing, approved and exhibited height)

Source: BVN



Figure 18 *Proposed concept envelopes within the future precinct context (existing, approved and exhibited)*

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Figure 19 CGI of future development massing on site and adjacent to the site

Source: BVN



Figure 20 CGI of future development massing on site and adjacent to the site

Source: BVN

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

Overshadowing of neighbouring development

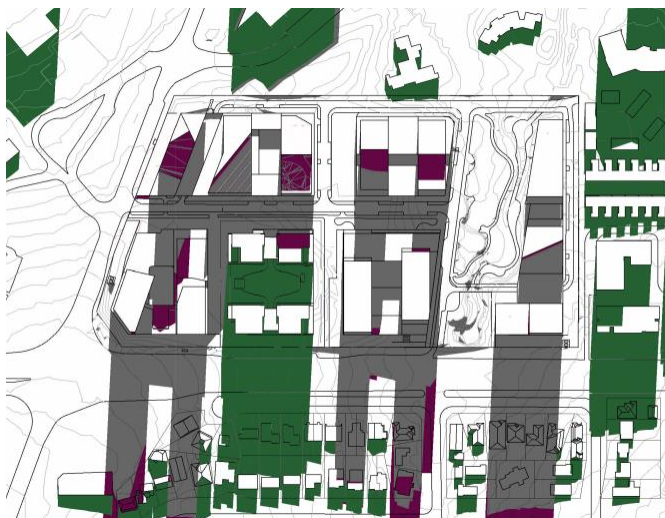
Mid-winter shadow diagrams have been prepared by BVN based on the indicative reference scheme envelopes, as well as separately identifying shadow cast by the Parkside development located within subject site, at **Figure 21**.

BVN have undertaken a highly detailed overshadowing analysis of the existing adjacent development, including existing residential apartments, to sculpt the proposed envelopes. This sculpting involves tapered or inclined upper forms to the proposed envelopes, such that the existing solar access to adjacent apartment development is retained. Overshadowing analysis of neighbouring development is discussed in detail below.

In summary, the additional height proposed above the height development standards do not give rise to significant adverse overshadowing impacts when compared to a building height compliant scheme given the below:

- To the south of the site fronting Epping Road (and the Waring Street service road), the shadow cast by the additional height is largely constrained to roads and residential dwellings between 9am and 12pm. 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), not overshadowed from approximately 11am onwards. Therefore, the shadow plans demonstrate the private open spaces of the residential dwellings on Epping Road opposite the site continue to receive in excess of 3 hours of sunlight on 21 June.
- To the east of the site, shadows are cast on Morling College and Macquarie Park Village Residential of varying degrees between 11am and 3pm. As identified above, notwithstanding minor additional overshadowing extent, the proposed envelopes have been sculpted to retain a minimum of 2 hours solar access to all Macquarie Park Village apartments that currently achieve two hours solar access, in accordance with the ADG Design Criteria.
- With respect to the existing low-density townhouses adjacent Morling College, the additional height does not introduce any additional overshadowing compared to a height compliant scheme. While a height compliant scheme may overshadow the private open space to these townhouses, this approach is considered appropriate as the townhouse land is anticipated to be redeveloped consistent with their rezoning for high-density residential;
- The proposed urban structure of slender towers and open space provides gaps between buildings and their associated shadows, which results in intermittent shadows/sunlight passing over the properties during the affected period. This would not be achieved by a low, dense (height compliant) scheme that does not deliver open space and comprises wider tower forms. Further, a height complaint scheme would present additional overshadowing to properties south of the site as there would be an increase to the number and width of towers (despite being lower in height)

Future detailed building design will further consider shadow impacts and incorporate measures, where possible, to minimise impacts to adjoining properties. It is noted that the overshadowing analysis is for volumetric forms, and that detailed architectural forms with indentations and articulation will improve the overshadowing outcome, as they must be wholly within the concept envelopes. The shadow impacts during the summer solstice, spring equinox and winter solstice are included in the Architectural Design Report at **Appendix F** of the Amendment Report. In this regard, the overshadowing impacts created by the proposed concept envelopes, when compared to a height compliant scheme, are not considered to present any additional adverse impact.



9am



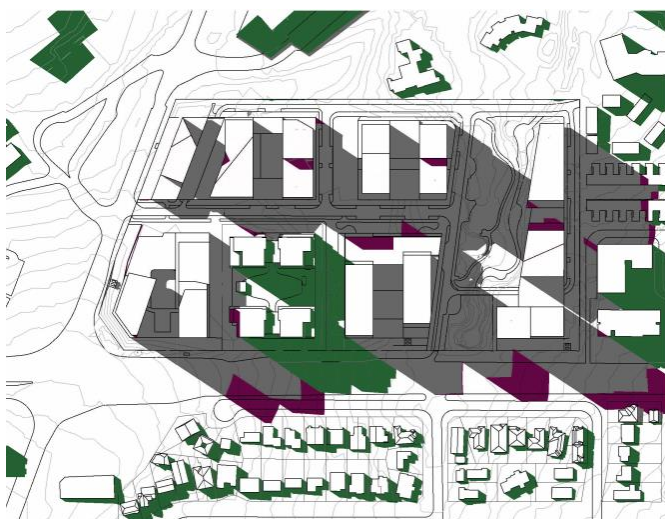
10am



11am



12pm

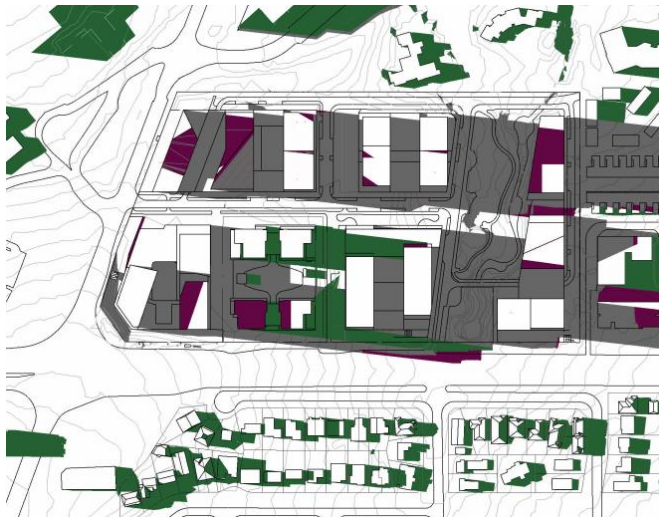


1pm



2pm

- Shadow cast by existing context massing
- Shadow cast by massing compliant with LEP height planes
- Shadow cast by massing non-compliant with LEP height planes



- Shadow cast by existing context massing
- Shadow cast by massing compliant with LEP height planes
- Shadow cast by massing non-compliant with LEP height planes

3pm

Figure 21 *Winter solstice shadow diagrams*

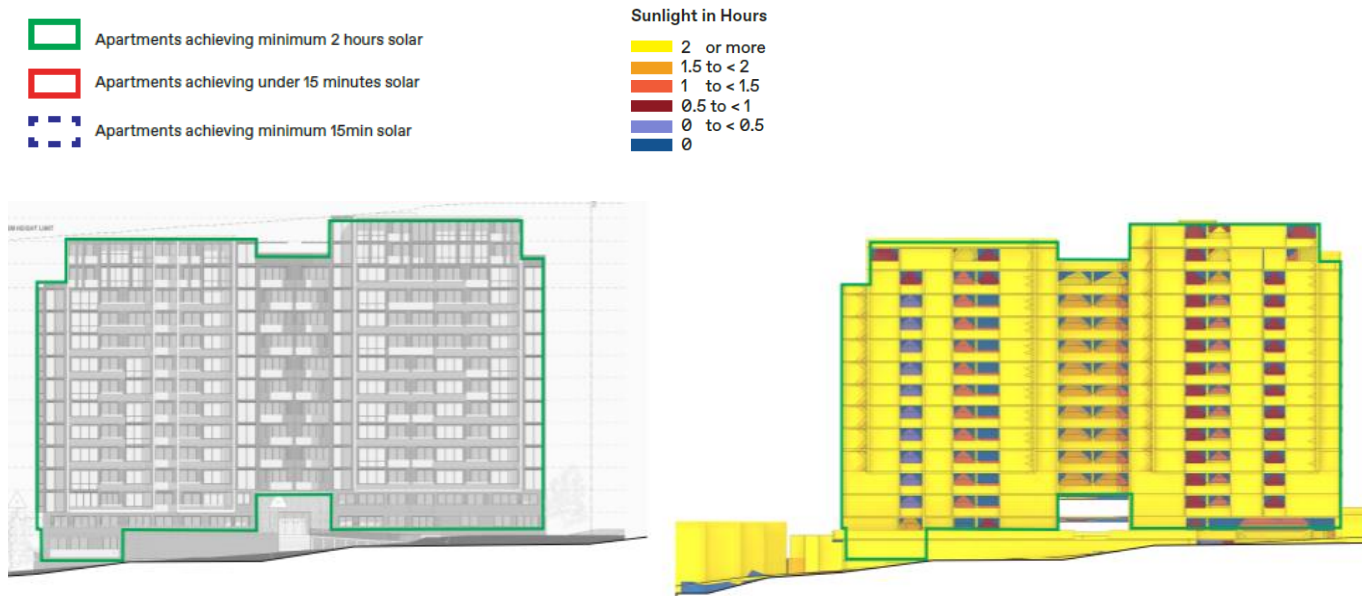
Source: BVN

The Parkside

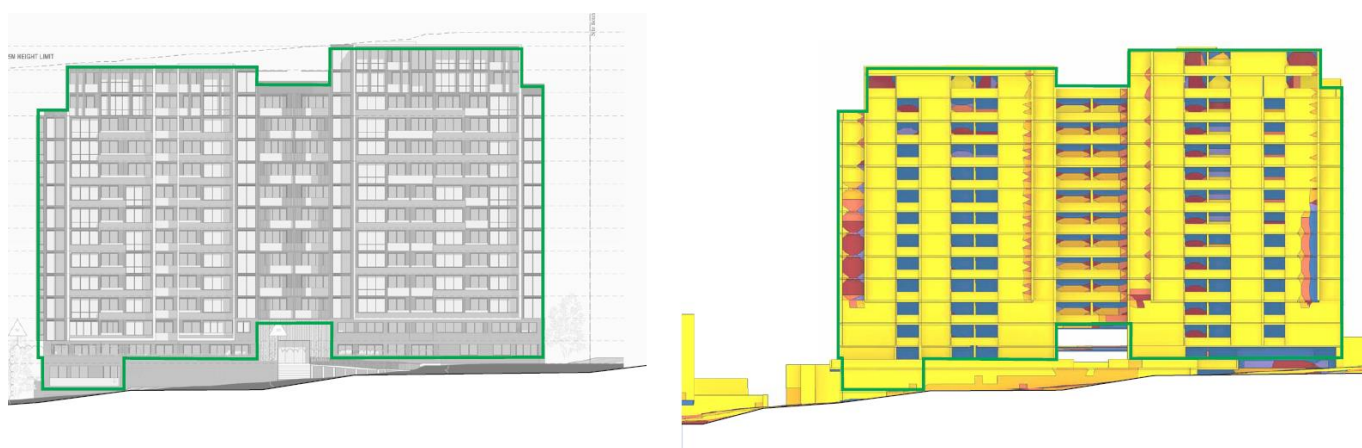
Detailed solar analysis of the Parkside development has been carried out by BVN, which has informed position and tapering of the proposed concept envelopes to retain the adjacent development's existing solar access. Approved plans of the development were sourced from City of Ryde Council. The analysis considers the reference scheme massing, which applies setbacks within the concept envelopes as stipulated in the Design Guidelines.

As illustrated in **Figure 22** and **Figure 23** BVN identify that 106 apartments in the North Tower and 96 apartments in the South Tower currently receive a minimum of two hours direct solar to living rooms and balconies, as prescribed the ADG Design Criteria, which have the potential to be impacted by overshadowing from development on the subject site. With a building height compliant scheme on the subject site (sculpted to retain solar access), the number of solar access apartments is preserved. With the reference scheme massing, which is constrained to be within the proposed envelopes with additional height (also sculpted to retain solar access) the number of solar access apartments continues to be preserved. While minor additional overshadowing may be cast on living rooms and balconies that currently receive at least two hours direct solar, the retained extent of solar exposure continues to meet the minimum prescribed by the ADG design criteria.

Therefore, the proposed concept envelopes, with additional height proposed above the building height development standards, would result in a development outcome that does not produce any additional overshadowing impact when compared to a building height compliant scheme (nor when compared to the existing condition).



Existing solar access



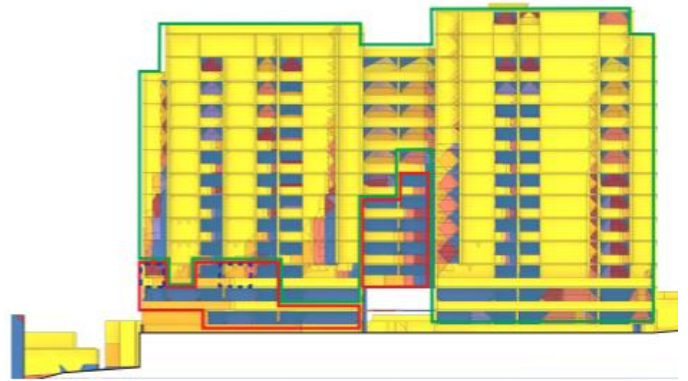
Solar access with a building height compliant scheme



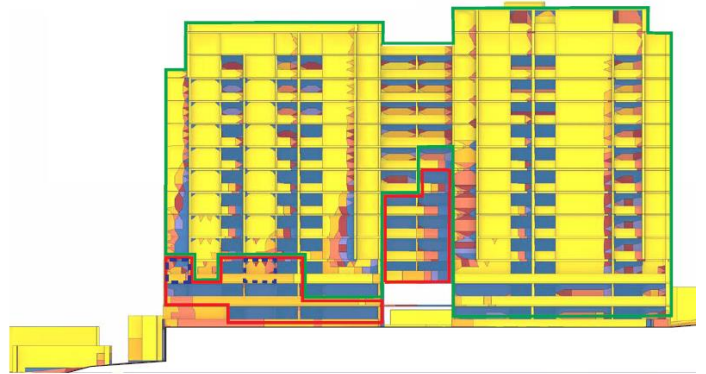
Solar access with reference scheme massing

Figure 22 North east elevation – North Tower

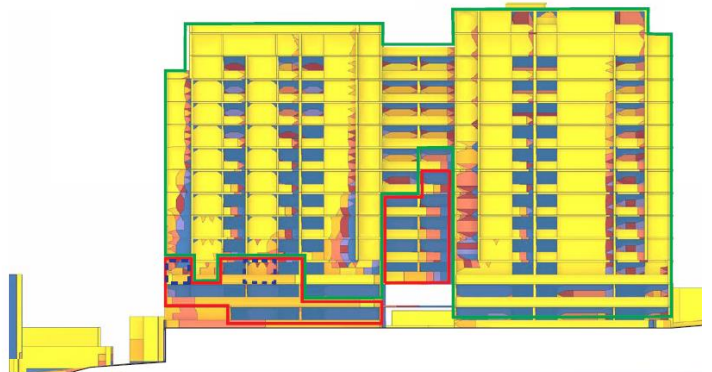
Source: BVN



Existing solar access



Proposed indicative reference scheme



Building height compliant scheme

Figure 23 North east elevation – South Tower

Source: BVN

Macquarie Park Village

Detailed solar analysis of the Macquarie Park Village development has been carried out by BVN, which has informed position and tapering of the proposed concept envelopes to retain the adjacent development's existing solar access. Approved plans of the development were sourced from City of Ryde Council. The analysis considers the reference scheme massing, which applies the setbacks within the concept envelopes as stipulated in the Design Guidelines.

As illustrated in **Figure 24** BVN identify that 38 apartments in the Perth Building (adjacent the site) currently receive a minimum of two hours direct solar to living rooms and balconies, as prescribed the ADG Design Criteria, which have the potential to be impacted by overshadowing from development on the subject site. With a building height compliant scheme on the subject site (sculpted to retain solar access), the number of solar access apartments is preserved. With the reference scheme massing, which is constrained to be within the proposed envelopes with additional height (also sculpted to retain solar access) the number of solar access apartments continues to be preserved. While minor additional overshadowing may be cast on living rooms and balconies that currently receive at least two hours direct solar, the retained extent of solar exposure continues to meet the minimum prescribed by the ADG design criteria.

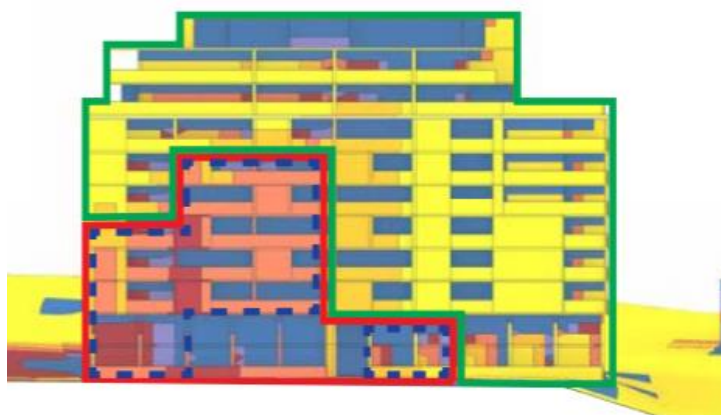
Further to apartments, BVN have also analysed the communal open space of the Macquarie Park Village, which includes a minor podium area between the Adelaide and Perth buildings. Existing shadow analysis demonstrates that the principal usable part of communal space for this development is the more expansive open space between towers further west and the swimming pool area, as the minor area closest to the site is generally overshadowed by the development's towers. Given existing self-shading, the proposed development, with additional height, is not anticipated to result in any additional adverse overshadowing impact.

Therefore, the proposed concept envelopes, with additional height proposed above the building height development standards, would result in a development outcome that does not produce any additional overshadowing impact when compared to a building height compliant scheme (nor when compared to the existing condition).

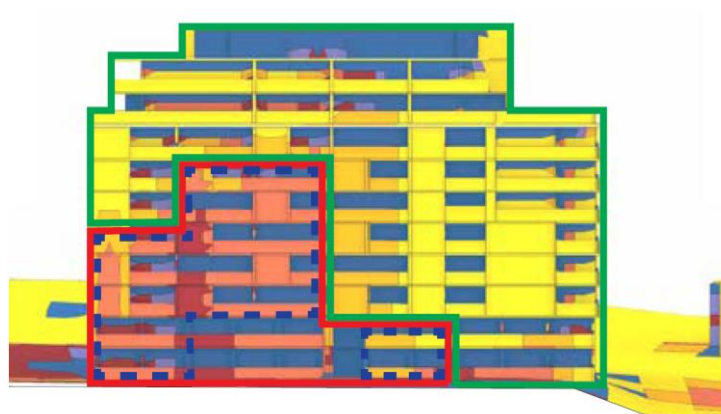
-  Apartments achieving minimum 2 hours solar
-  Apartments achieving under 15 minutes solar
-  Apartments achieving minimum 15min solar

Sunlight in Hours

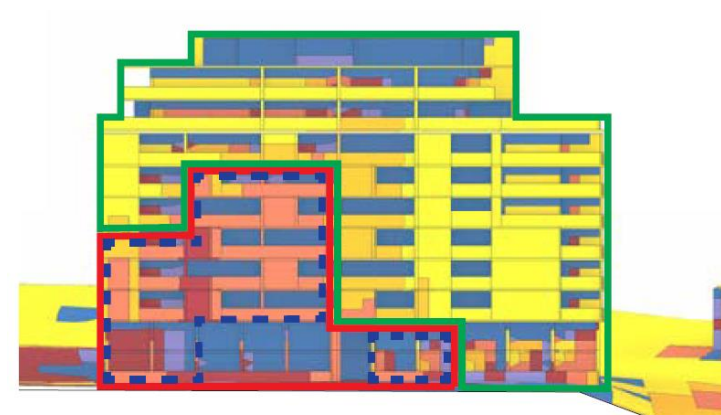
-  2 or more
-  1.5 to < 2
-  1 to < 1.5
-  0.5 to < 1
-  0 to < 0.5
-  0



Existing solar access



Building height compliant scheme



Proposed indicative reference scheme

Figure 24 North east elevation – Perth Building

Source: BVN

Open Space within the proposed concept masterplan

Further to the analysis of overshadowing to existing neighbouring development, BVN have carried out overshadowing analysis of the proposed open spaces within the masterplan. Importantly, it is reiterated that the proposed open space is only made feasible by the redistribution of floor space to additional height proposed above the building height development standards to specific towers. The solar analysis of the proposed open space provided below, therefore, must be viewed in light of the fact that a height compliant scheme would require the loss of these open spaces, significantly compromising access to sunlit open space in a height compliant scenario.

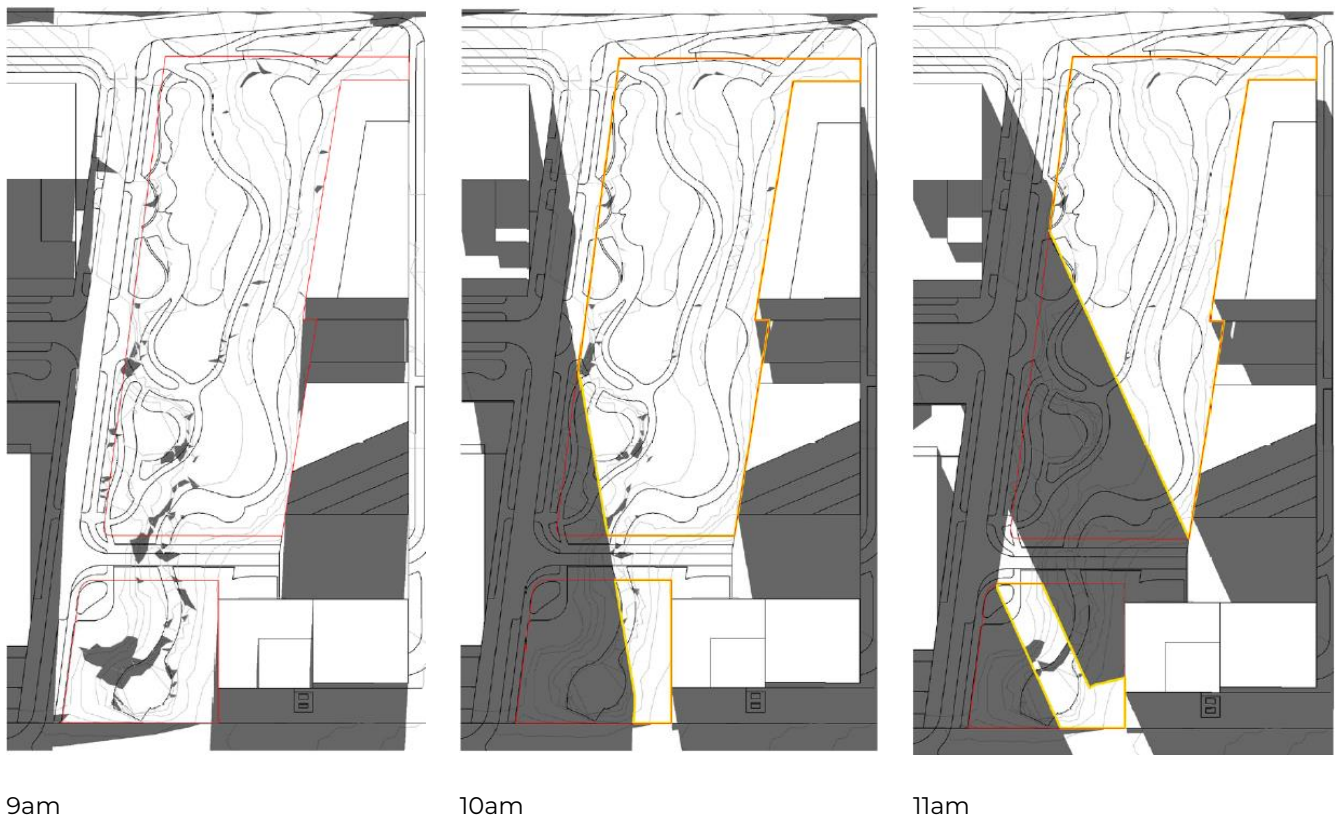
Solar access to proposed open space has further informed sculpting of the proposed concept envelopes to achieve an appropriate period of direct solar access to these open spaces, notwithstanding the additional height proposed above the building height development standards.

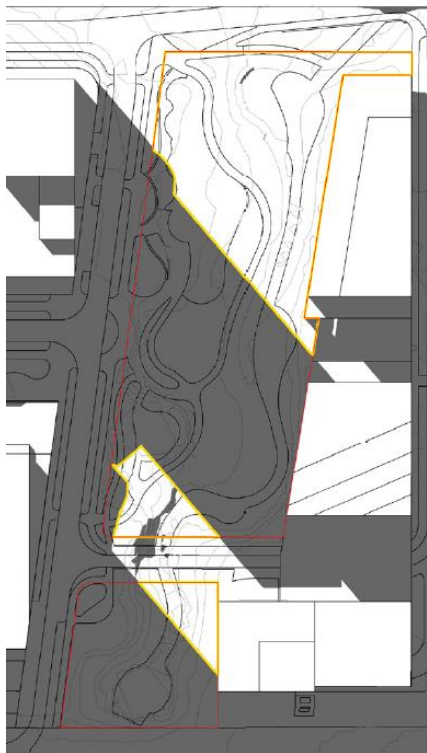
Kikkiya Park and the urban plaza

A detailed solar access analysis has been conducted for Kikkiya Park and the Urban Plaza during the winter solstice. BVN confirm that these public spaces receive a minimum of three hours of direct solar to 50% of their area, as per the RDCP 2014 provision for solar access to public open space, with the majority of sun exposure occurring in the morning hours, as demonstrated in **Figure 25** and **Figure 26** below. It is noted that this solar exposure period exceeds that required for communal open space guided by the ADG (2 hours mid-winter to 50% of the principle usable part).

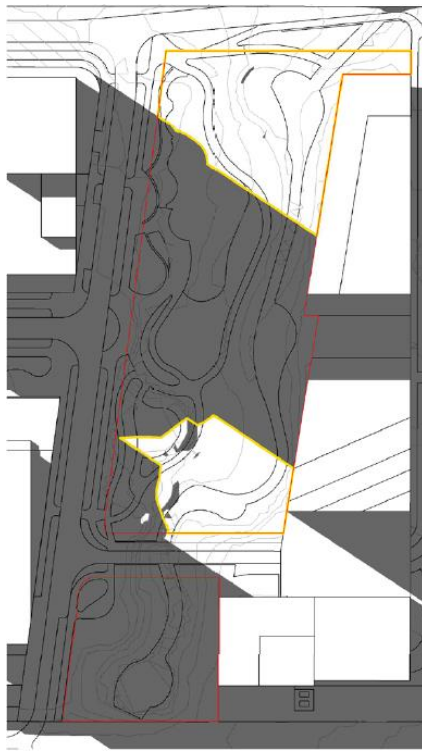
It is also important to note that there are areas exposed to sunlight throughout the day. Kikkiya Park receives solar exposure in full from 9am and 10am, and two distinct areas in the northern and southern portions of the park receive direct solar between 2pm and 3pm. This is achieved by design of the slender towers with additional height (and would conversely be unachievable with lower, wider building height compliant towers, ensuring that Kikkiya Park and the Urban Plaza remain inviting and pleasant spaces for all to enjoy. It is noted that a considerable amount of the overshadowing to the urban plaza is situated on the central boulevard and does not directly fall on publicly accessible gathering spaces.

The proposal, with additional height proposed above the building height development standards, therefore achieves adequate sunlight for residents and visitors to the publicly accessible open space, enhancing the usability and enjoyment of these public spaces. The careful planning and design considerations reflected in this analysis underscore the commitment to creating an appealing, sunlit environment for residents and the broader community.

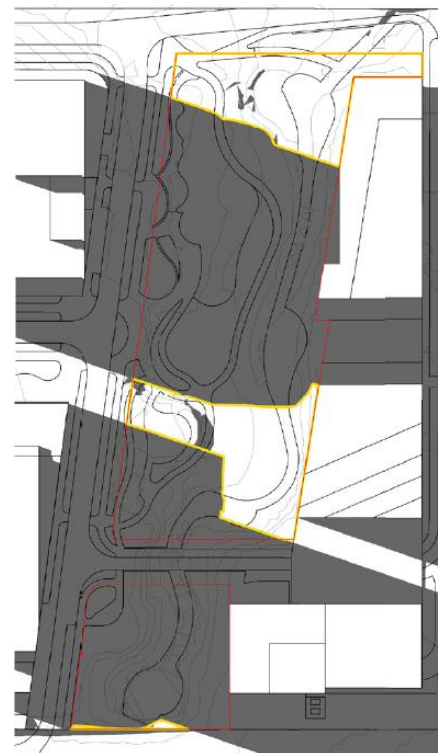




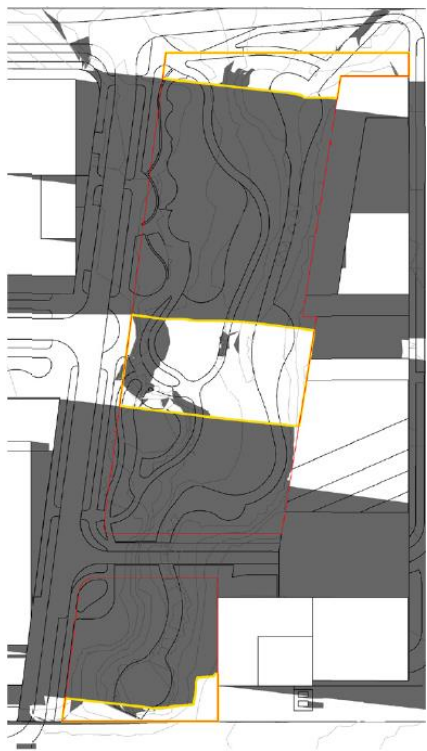
12pm



1pm



2pm



3pm

- Public open space overall
- Public open space in sun

Figure 25 *Solar access to Kikkiya Park during the Winter Solstice*

Source: BVN

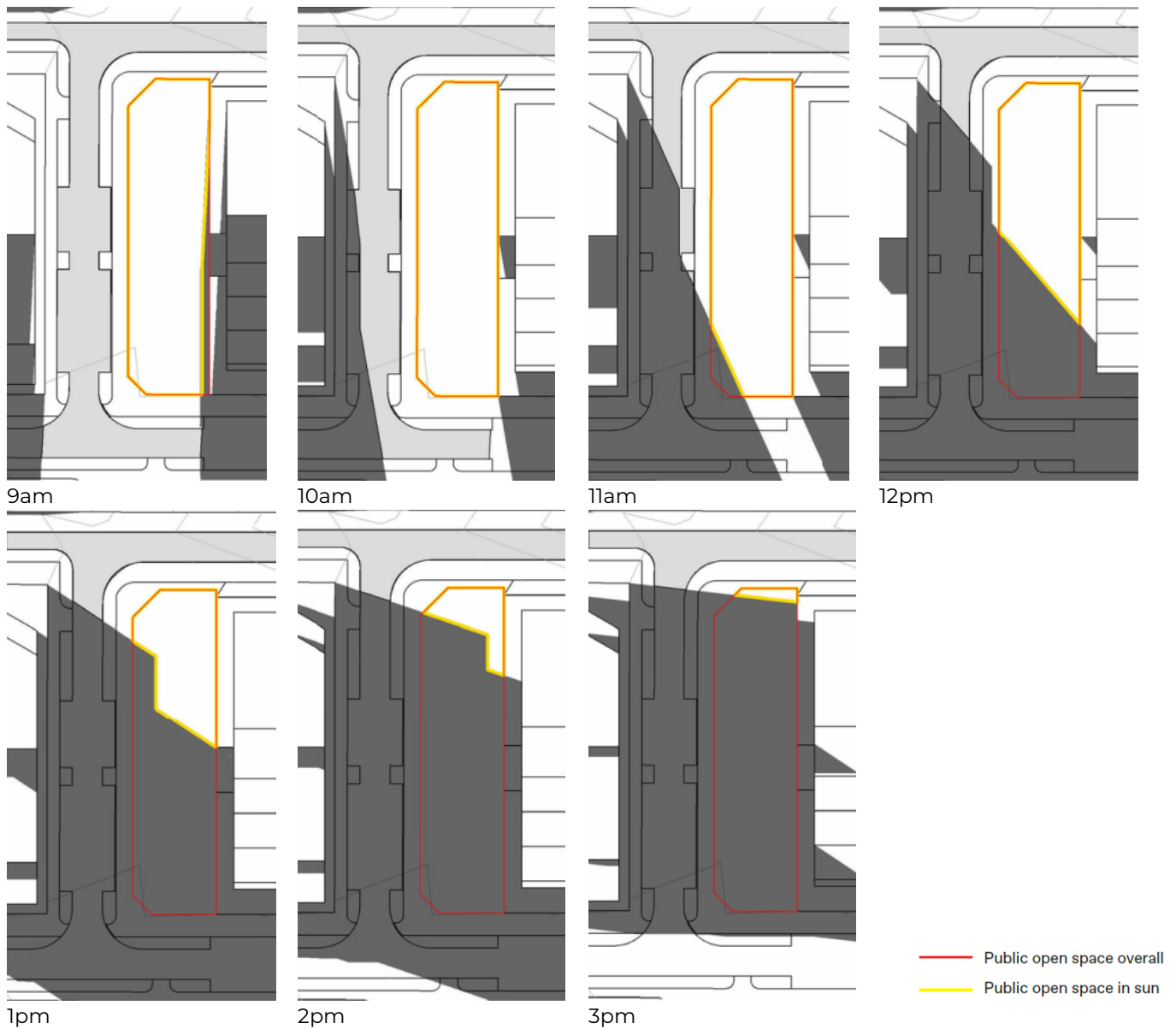


Figure 26 Solar access to the Urban Plaza at Winter Solstice

Source: BVN

Communal open space within future development lots

Figure 27 identifies the extent of solar exposure to potential communal open space within future development lots. The diagram demonstrates that, notwithstanding the proposed additional height above the building height development standards, an appropriate quantum of solar access can be achieved as part of future detailed DAs. Future communal open space has been considered in the proposed concept envelope extent, potentially located on podiums and/or located on rooftop area (identified in green outline in the figure). It is noted that a building height compliant scheme would not result in improvements to solar access to the urban plaza.

Solar exposure to future development communal open space is detailed in the BVN Design Report at **Appendix F** to the Amendment Report. The report provides area calculation to confirm percentage of space that receive sun, as well as the hours of solar achieved, with respect to the ADG Design Criteria. In summary, the design of concept envelopes, with a primary north-south orientation facilitates future detailed development with capacity to achieve consistency with the ADG design criteria. Given sculpting of the additional height, the proposed additional height above the building height development standards does not result in any compromise to achievement of ADG objectives for solar access to communal open space, when compared with a height compliant scheme.

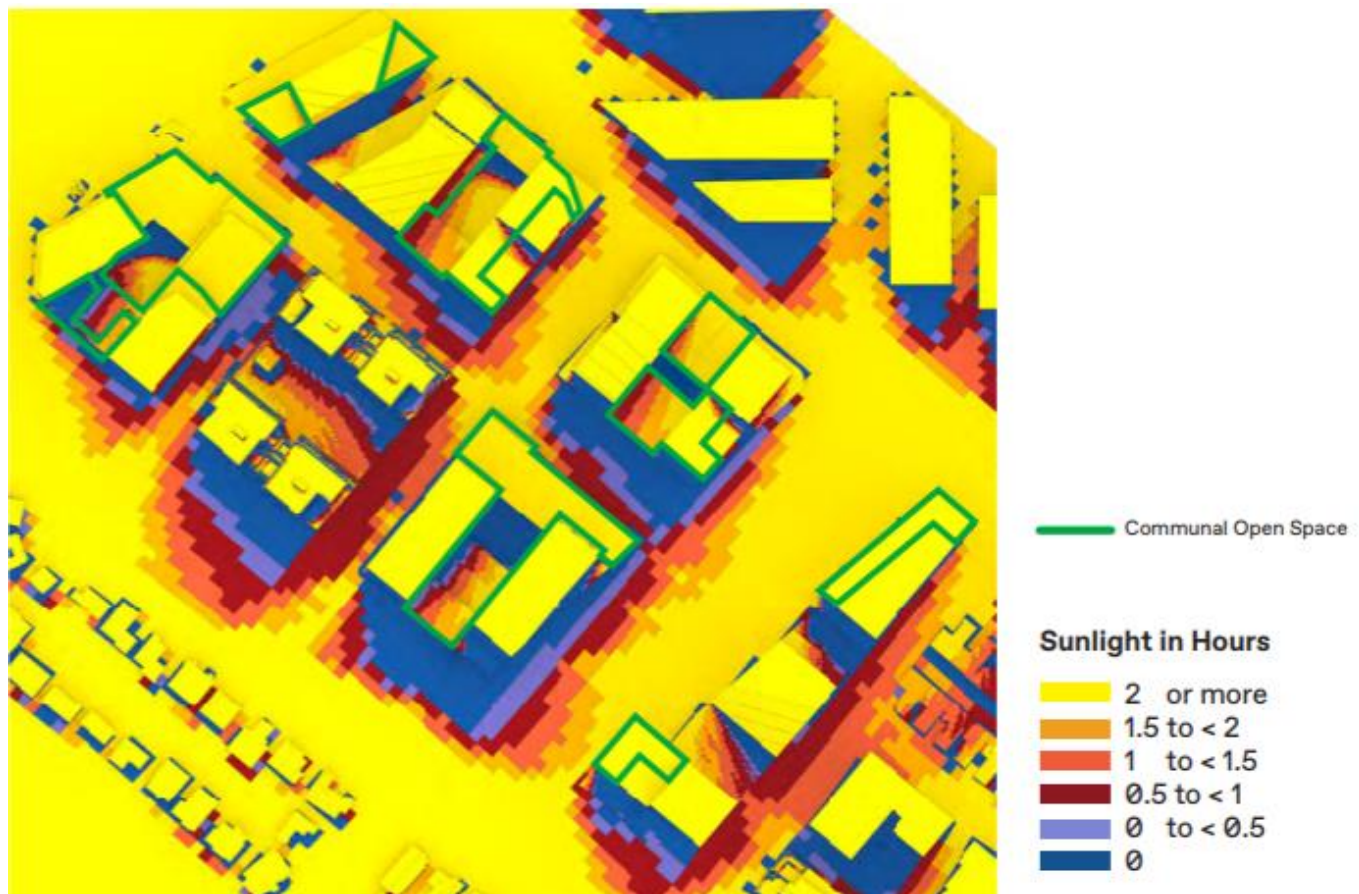


Figure 27 Solar access to communal open spaces between 9am – 3pm during the Winter Solstice

Source: BVN

Overshadowing and the appearance of the Area

The proposed development will achieve an appropriate visual relationship with the existing character of the area. The design of concept envelopes considers the compatibility of its bulk and scale with existing and future development in the precinct, and delivers commensurate built form, aligning with the future character of Macquarie Park.

As detailed in response to objective (a) above, Macquarie Park is an evolving precinct transitioning into a mixed-use, high-density area, with recent rezonings including that associated with the Macquarie Park TOD. The current locality features buildings with heights to 193m, stepping down to 185m, 125m, and 120m to the northeast and east, respectively. This further tapers to 75m at Ivanhoe Estate and adjacent to the site at Macquarie Park Village.

Given the context of established and future built forms, the proposal is compatible with the existing and desired character of the locality in terms of bulk and scale, and will enhance the appearance of the area, with overshadowing appropriately mitigated to not adversely impact adjacent development and future open space.

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 seniors housing, residential accommodation, commercial premises, recreation areas, and roads. The concept masterplan includes a new road, as envisaged by Ryde Council, connecting Balaclava Road to Herring Road (through the adjacent Morling College site), enabling the connectivity and pattern of development envisaged for this precinct in Macquarie Park.

Importantly, the proposed additional height does not affect the concept masterplan's achievement of this objective, as the consolidation pattern and sustainable integrated land use and transport development approach remains regardless of additional height proposed above the building height development standards.

The future redevelopment of the site is supported by access to public transport infrastructure, principally Macquarie University Metro Station (which will be less than 700m walking distance following removal of

boundary fencing between the BaptistCare site and Macquarie University) and bus routes along Epping Road. The integration of the proposed land uses and transport infrastructure is considered to represent sustainable, orderly and economic development.

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 in close proximity to Macquarie University Station. Further, the concept 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 as illustrated in **Figure 28** and **Figure 29** below.

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 proposed uses clearly meet the objectives of the District Plan.

Notwithstanding the proposed additional height, the proposed floor space does not meet or exceed the maximum permissible floor space for the site. The density of diverse housing and ancillary uses is therefore wholly anticipated and supported by the Housing SEPP, which in tandem supports the principles of Transit Oriented Development. The additional height proposed above the building height development standards removes built form from the ground plane and significantly improves pedestrian flow and connectivity throughout the site, enabling improved integration of land use and public transport infrastructure.

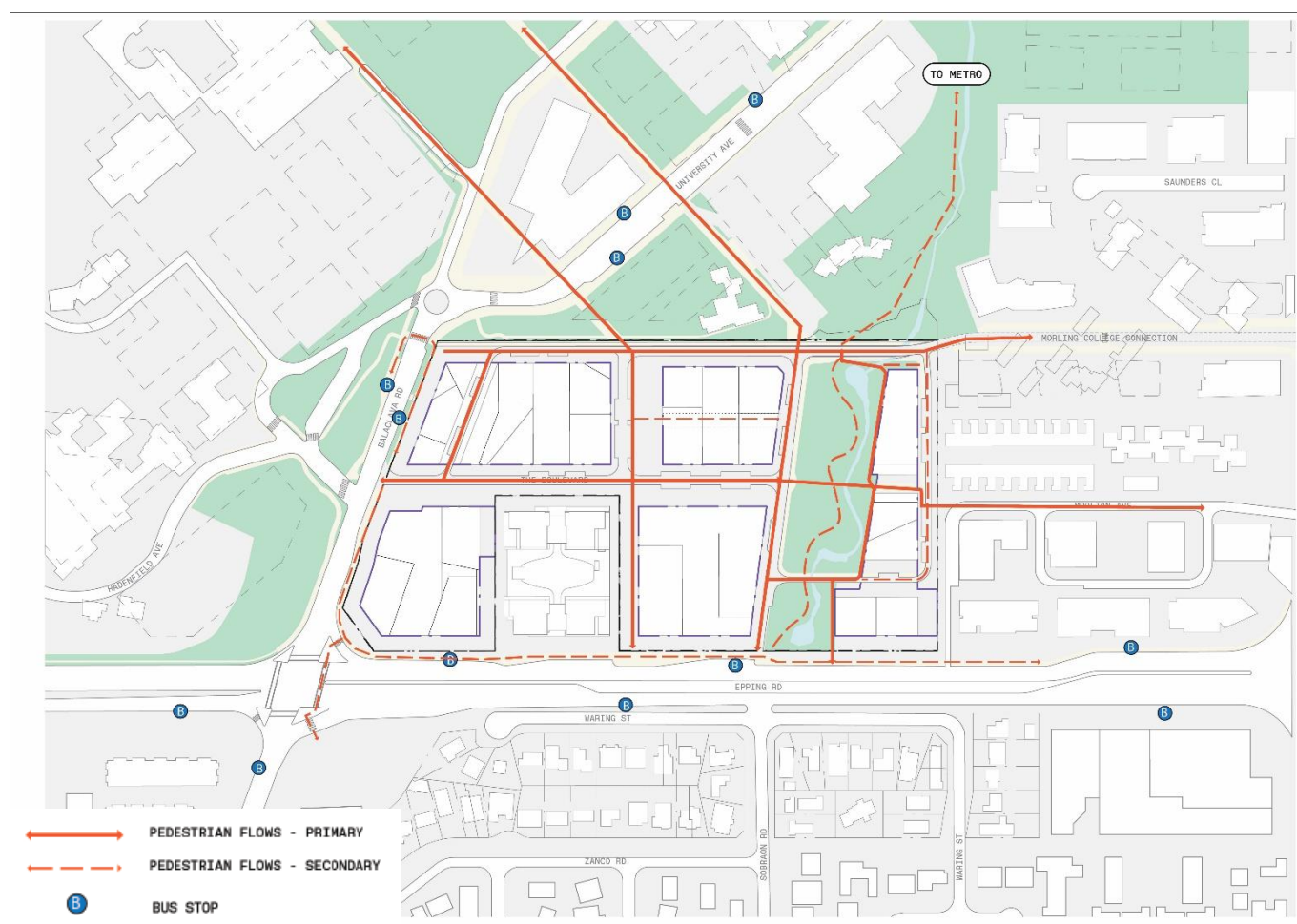


Figure 28 Pedestrian permeability

Source: BVN

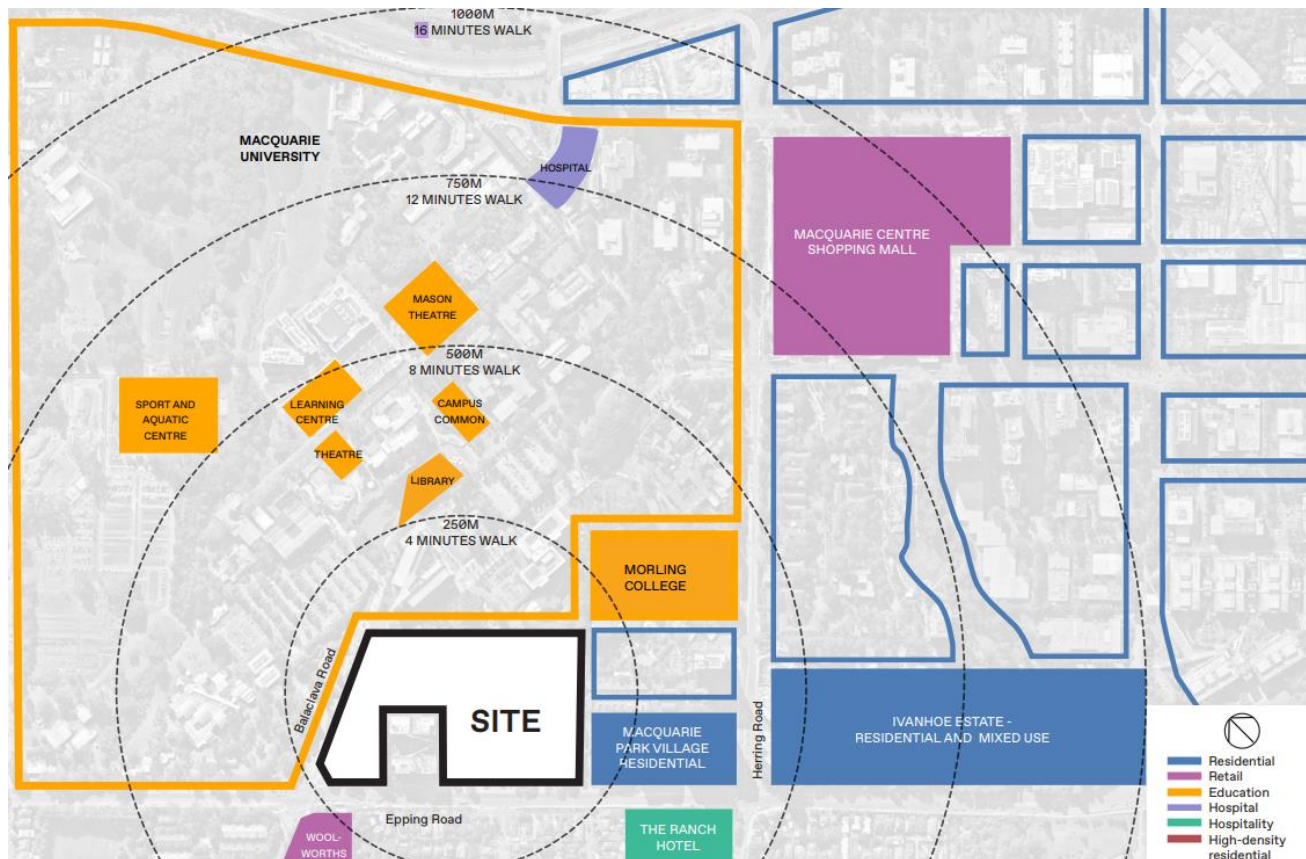


Figure 29 Context analysis of the surrounding land uses

Source: BVN

Sustainable integration of development and transport infrastructure

The traffic report prepared by JMT Consulting, accompanying the application at **Appendix H**, includes a preliminary Green Travel Plan (GTP), which identifies measures put in place by the development occupants to encourage sustainable travel. The success of the GTP is enhanced by the additional height proposed, as the additional open space across the site facilitates sustainable and safe travel of occupants.

The principles of a GTP are applied to all people travelling to and from a site. Government authorities are placing increasing emphasis on the need to reduce the number and lengths of motorised journeys and in doing so encourage greater use of alternative means of travel with less negative environmental impacts than the car.

The sustainable integration of use and public transport will be demonstrated by future development that meets the identified objectives, which include:

- High mode share for public transport, cycling and walking to work journeys;
- Ensuring adequate facilities are provided at the site to enable the tenants and visitors of the development to commute by sustainable transport modes; and
- Facilitate the sustainable and safe travel of occupants

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

Wind Impacts

Notwithstanding the additional height proposed, RWDI confirm in their Pedestrian Wind Assessment (**Appendix AA** of the Amendment Report) that wind conditions for the majority of trafficable outdoor locations within and around the development will be suitable for their intended uses. The report identifies recommended treatments for areas subject to stronger wind, which have been identified in the accompanying Design Guide to the application for inclusion in future detailed DAs following consent for the masterplan. Subject to the inclusion of these treatments (which are further assisted by trees located adjacent to the site) it is expected that wind conditions for all outdoor trafficable areas within and around the development will be suitable for their intended uses.

The analysis demonstrates that the proposed concept masterplan, notwithstanding exceedance of the building height standard, remains 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 AA** of the Amendment Report.

Visual Impacts

An updated Visual Impact Assessment (VIA) has been prepared by Urbis and is included at **Appendix Z** of the Amendment Report. The intention of the VIA is to confirm that the concept masterplan does not result in adverse visual impact, with respect to the future character of the precinct. The report concludes that the magnitude of visual change (when compared to the existing condition), while significant (as inevitable for a development of such scale) is considered to be reasonable given the project's strategic merit and the provision of significant areas of open space.

Importantly, the VIA has also considered a building height compliant scheme and finds that the visual outcome is improved by the proposed more slender, taller towers, with greater diversity in height and open space relief.

The VIA confirms that while the site will be mostly visible from the immediately surrounding streetscapes, 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 through the adoption of various mitigation measures, including retention of existing boundary vegetation where possible and proposed supplemental planting to filter view of built form, particularly at the lower level of the proposed development.

The VIA demonstrates the proposed concept envelopes do not alter the foreground composition or significantly alter, or negatively effect, the scenic quality of streetscape views along Balaclava Road. The additional height does not block unique scenic, or highly-valued view compositions in comparison to the blocking effects of a complying scheme. It is also unlikely to block any neighbouring private domain views of high scenic quality or value.

The proposed variation to the building height development standard offers greater visual variety in terms of height, form, location and scale. This envelope arrangement includes wide spatial separation between some tower forms, generating visual permeability through the site for example in relation to the open green corridor, and as such generates greater visual interest relative to the height compliant scheme. The through-site visual permeability generates positive visual amenity, creating a sense of space and visual break in continuous built form compared to a height compliant scheme.

The effects, forms and scale of the proposed variation are compatible and not dissimilar to the existing and desired future character for areas within the immediate visual catchment including along Epping Road, Herring Road and, Macquarie Park.

The view in **Figure 30** is taken north from the western side of Epping Road, opposite the southwestern corner of the site boundary. The building height compliant scheme results in towers of relatively uniform height and massing to the mid-ground of the view, along the alignment of the road corridor. The uniform height and limited spatial separation appears as a long continuous wall of development, characterised by limited visual relief or variety.

Conversely, the proposed concept envelopes offer significant variety in height, with greater spatial separation between towers, mitigating the dense "street wall" effect.

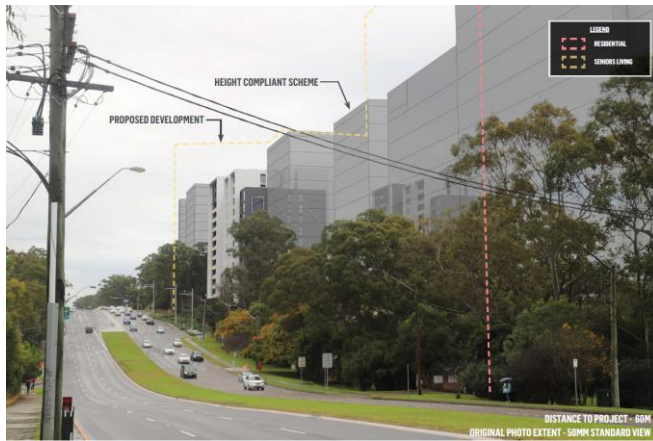


Figure 30 Building height compliant scheme

Source: Urbis



Proposed concept envelopes

The view in **Figure 31** is taken from northeast of the site, from the corner of Sobraon and Zanco Road. The compliant scheme presents towers of relatively uniform height and massing to the mid-ground of the view, along the alignment of the Epping Road corridor. The relatively homogeneous form of the towers provides limited visual variety.

Conversely, it is highly evident from the illustration of the proposed concept envelopes that wider spatial separation is achieved by taller, slender towers, which greatly improve the visual outcome. Further, as the eye is drawn to horizontal viewing, the taller towers, despite delivering the same floor space, have the visual effect of being less dense and “lighter” when compared to a heavy stout tower scheme.

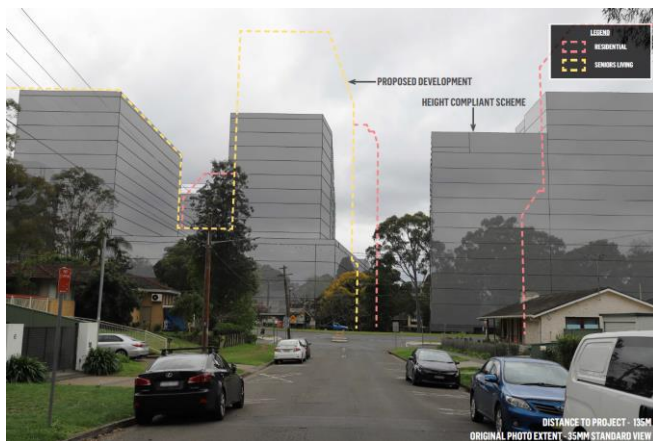


Figure 31 Building height compliant scheme

Source: Urbis



Proposed concept envelopes

The Visual Impact Assessment (VIA) (**Appendix Z** of the Amendment Report) concludes that:

- The proposal incorporates a number of measures that address view and visual impact on nearby residential uses by mitigating the appearance of scale and bulk, including separation of buildings, variations in massing, and articulation.
- The proposal concentrates the tallest buildings, herein referenced as the ‘marker buildings’ as identified in **Figure 11** and **Figure 12** at the site corners, acting as a gateway to the site and greater precinct, as well as in reference to the wider urban built form along Epping Road.

Traffic Impacts

The proposed concept masterplan does not seek consent for any additional floor space than that which would be available in a building height compliant scheme, therefore the proposed building height (inclusive of the variation) does not represent any change to the yield and therefore traffic impacts that would otherwise result from a compliant building height proposal.

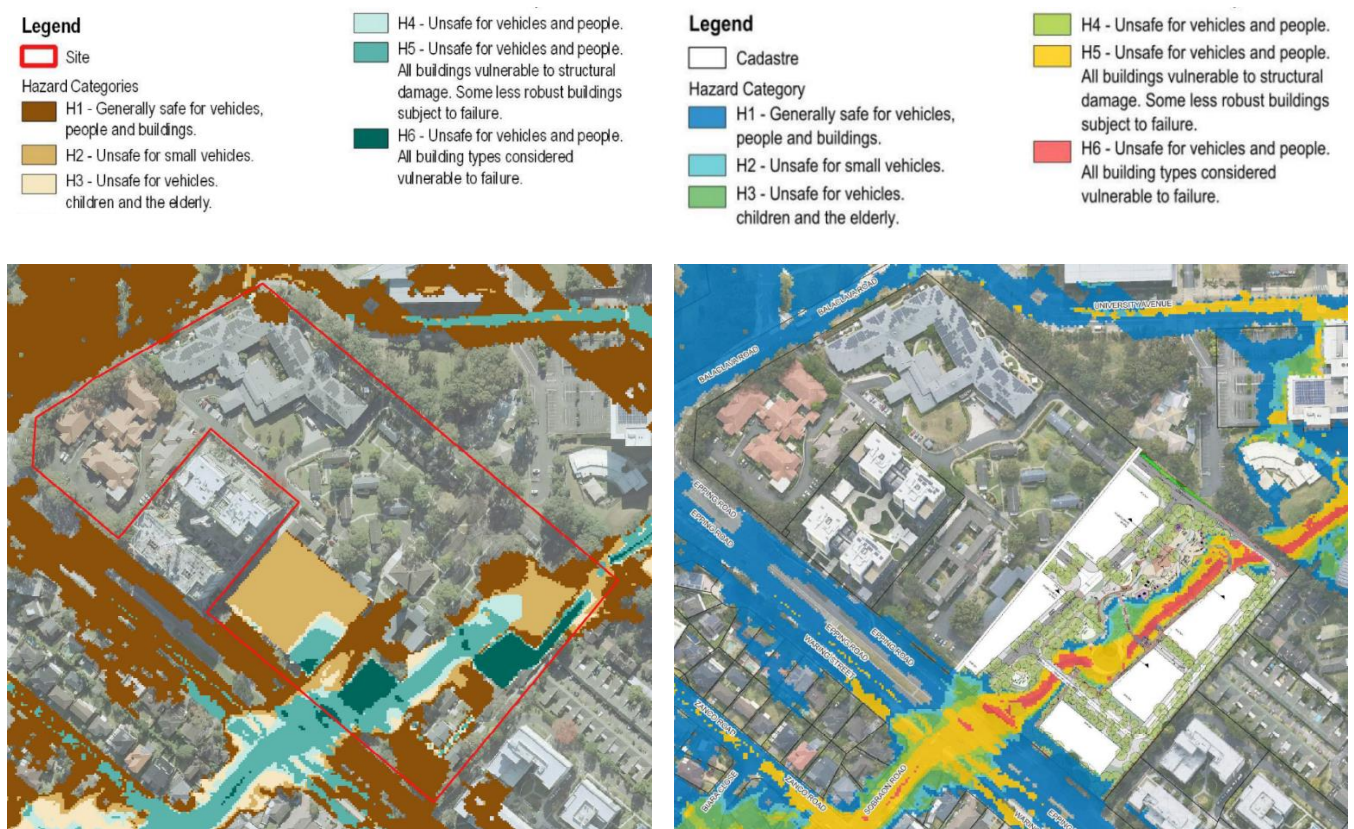
Flood Impacts

An Updated Flood Impact Risk Assessment has been prepared by Stantec and is included at **Appendix I** to the Amendment Report. The assessment concludes that the proposed amended concept masterplan results in an improvement to the projected flood impacts when compared to the previously exhibited masterplan.

While flood modelling has not been carried out for a building height compliant scheme, the originally lodged masterplan comprised built form within the area of the proposed Kikkiya Park (specifically, a school). Similarly, the building height compliant scheme locates built form within this area, as this significant open space is only achievable through relocation of floor space to create taller, more slender towers (resulting in the proposed height exceedance).

In its response to the originally lodged scheme, DPHI requested that the applicant *Consider the relocation of sensitive uses away Flood Prone lands, in line with Council, SES and BCD advice*. The amended masterplan has adopted this recommendation, and in doing so proposes an expansive park and naturalised creek through the site. Ultimately, the location of Kikkiya Park acts as a natural method of managing the projected flood behaviour of the site.

Stantec state that the relocation of built form from the flood prone area to create Kikkiya Park significantly reduces flood hazard during a Probable Maximum Flood (PMF) event. This is illustrated in **Figure 32** below, which provides a direct comparison of the exhibited proposal (akin to a building height compliant scheme) and the proposed concept masterplan reference scheme's flood hazards during a PMF event. The comparison clearly demonstrates that flood waters no longer surround proposed built form, but are now contained within the proposed Kikkiya Park.



Flood Hazard Categories in a PMF Event – Previously exhibited masterplan conditions

Flood Hazard Categories in a PMF Event – Amended concept masterplan reference scheme conditions

Figure 32 Comparison of the previously exhibited masterplan and the amended proposed concept masterplan PMF event flood hazard categories

Source: Stantec

Additionally, Stantec have identified that the proposed amended concept masterplan results in minimal impacts when considering the 20-year ARI, 100 year ARI, 100 year, ARI + 10% rainfall increase, ARI + 20% rainfall increase and PMF flood planning events. Overall, they have noted:

- In all but the PMF event, there were projected reductions in flood levels on Epping Road;

- In all floods there is a zone of local increase in the vicinity of the boundary where the overland flow across Epping Road spills into to the subject property (between the proposed new access road off Epping Road and the eastern boundary of the property) which does not pose a significant risk because the local increase in flood level leads to a local decrease in the flood velocity;
- In all flood downstream of the site there is a zone of increase confined to the watercourse; and
- There are beneficial reductions observed in flooding beside three buildings on the right bank (looking downstream) located at 5, 7 and 8 Saunders Close, Macquarie Park which outweigh the disbenefits of small increases in flood levels within a section of the downstream watercourse.

The downstream extent of impacts within the watercourse based on the proposed concept masterplan reference scheme arrangement is shown in **Figure 33**. Importantly, there are large sections within the site and immediately adjacent to the site within the Macquarie University Campus which have observed changes in flood extents from 'was wet' to 'now dry'. It is noted that water level increases greater than 0.50m are associated with the re-establishment of a watercourse through Kikkiya Park in the form of four ponds connected by riffles and a channel. Ultimately, this area will be supplemented by the inclusion of a raised weir at the downstream end of Pond 4 with a primary box culvert outlet to increase flood storage within the site, with the aim of reducing downstream flood level impacts.

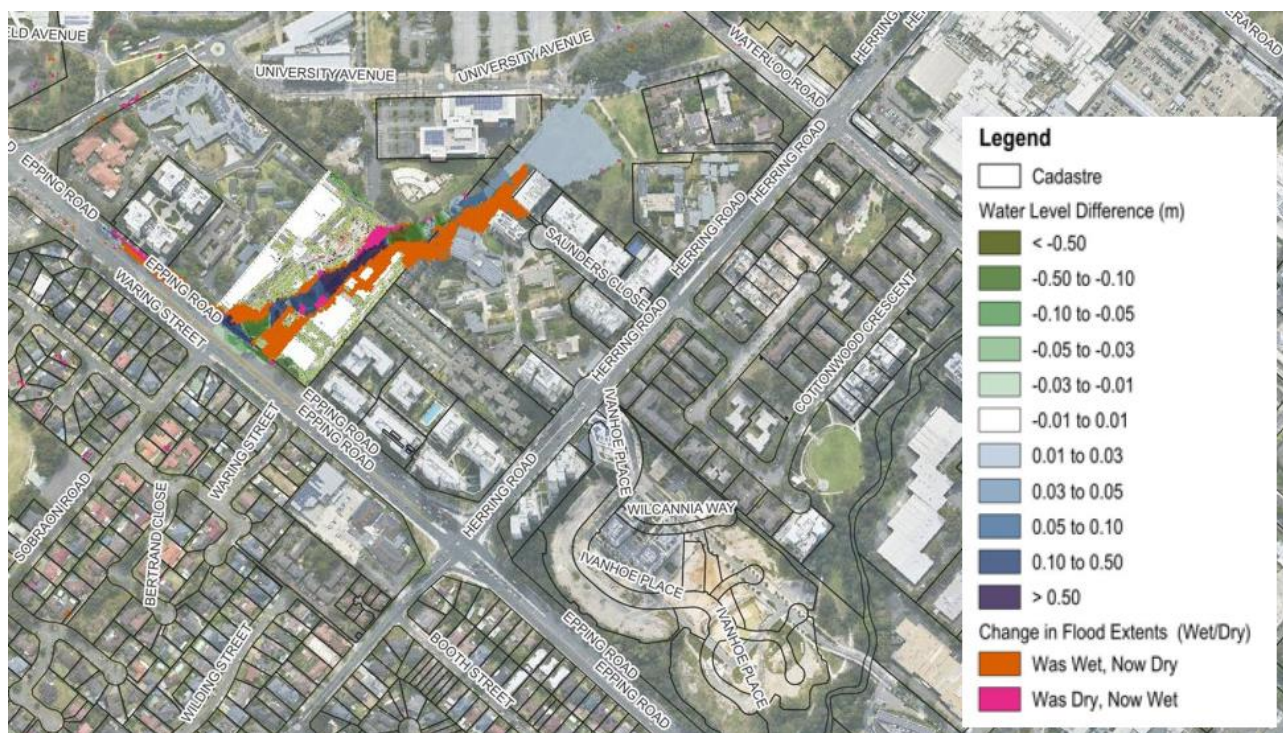


Figure 33 Regional 100 year ARI Flood Level Impacts (Stage 1 reference scheme overlay)

Source: Stantec

The above outcome is made possible through the relocation of floorspace from within flood prone areas on the site (as would be the case in a building height compliant scheme) to the upper portions of proposed towers. The result is additional open space and a more permeable ground plane, facilitating the revitalisation of the Kikkiya Creek and establishment of a creek line inspired by the short-finned eel, which is native to the site.

Should the proposed additional height proposed above the building height development standards be removed, and Kikkiya Park still retained to manage flooding, the loss of floor space would render the proposal unable to deliver the 10% quantum of affordable and the additional seniors housing proposed.

Services

The proposed concept masterplan does not seek consent for any additional floor space than that which would be permissible in a building height compliant scheme, therefore the proposed building height (inclusive of the variation) does not represent any change to the yield and therefore the services and infrastructure that would otherwise result from a compliant building height proposal.

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

The additional height proposed facilitates an improved relationship with the site's road frontages. The amended concept masterplan includes additional open space at ground level, made possible through the relocation of floor space to create taller, slender towers.

Epping Road Frontage

The amended 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, as illustrated in **Figure 34**. The Epping Road frontage also provides a green link to enhance pedestrian connectivity between buildings to provide sightlines through the site. The proposed land uses, built form and the landscaping treatment will reinforce this road frontage, while providing further activation from that which currently exists.



Figure 34 View from Epping Road into the site

Source: Arterra

Balaclava Road

The proposed land uses along Balaclava Road include seniors housing and co-living (student accommodation). The concept masterplan incorporates a 10m setback from Balaclava Road, in accordance with the guidance provided within the RDCP 2014. This setback will enhance the site's street frontage along Balaclava Road, while also allowing for substantial landscaping opportunities. The setback incorporates deep soil and opportunity for landscape embellishment (subject to a future detailed DA), which will add visual interest and improve the overall amenity of the area.

The interface to Epping Road and Balaclava Road is illustrated on the landscape plan at **Figure 35**.

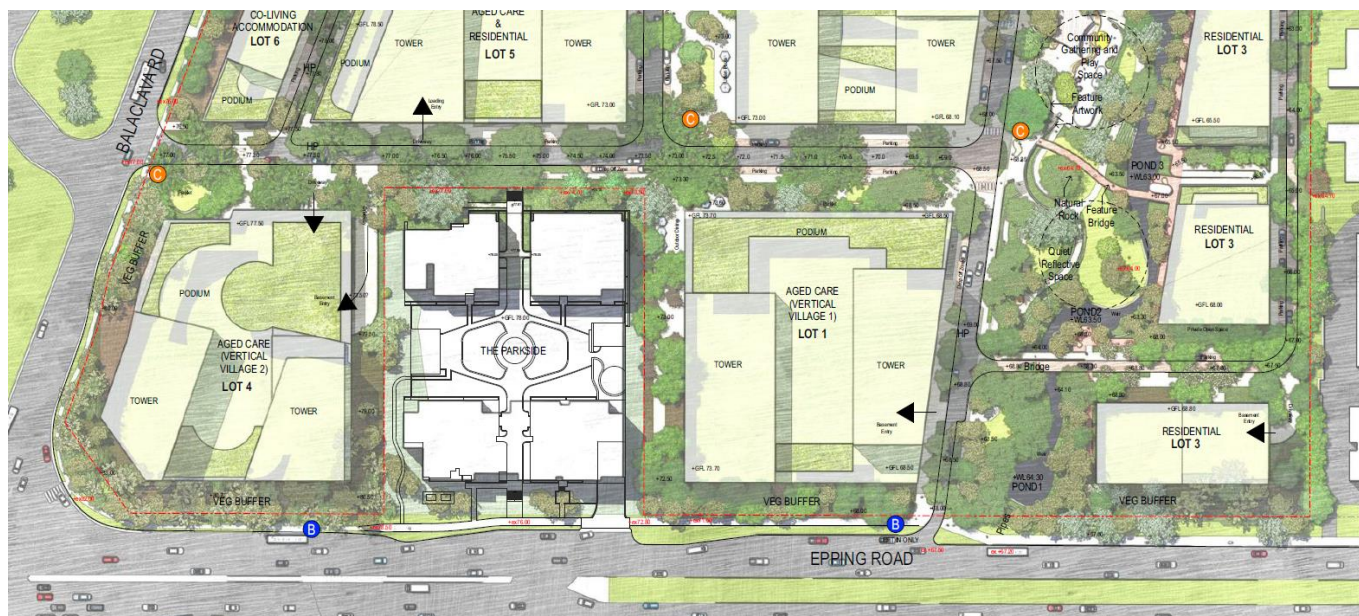


Figure 35 Landscape site plan illustrating built form envelopes and landscaping embellishment to Epping Road (south) and Balaclava Road (west)

Source: Arterra

Third Method

4.1.5 The underlying purpose of section 16 (in-fill affordable housing) the Housing SEPP Affordable Housing would be thwarted if strict compliance is required (Third Method)

The objective of Division 1 In-fill affordable housing of the Housing SEPP is to 'facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.' If strict compliance with the maximum building height was applied by the consent authority, the delivery of affordable housing would be compromised, or would result in a very poor urban design outcome with loss of publicly accessible open space. Therefore, the underlying objective of the in-fill affordable housing provisions would be thwarted, and in this light, compliance with the maximum building height standard is unreasonable.

Under the National Housing Accord (the Accord), NSW is tasked with delivering approximately 3,100 affordable dwellings by 2029³. The proposed concept masterplan seeks to deliver approximately 197 affordable housing apartments (based on the reference scheme and minimum required affordable GFA, subject to a future detailed DA), which is approximately 6% of the State's affordable housing target by 2029. This represents a significant opportunity to deliver affordable housing where it will make good use of existing infrastructure and services.

The following aspects of the proposal quantifies/demonstrates that the proposed variation to building height is capable of delivery the following affordable floor space, based on the indicative reference scheme:

- Affordable housing:
 - Minimum GFA of affordable housing apartments: 19,161m²
 - Potential total affordable housing apartments: 197 apartments
 - Total apartments contained in the portions of the residential buildings that exceed the maximum building height (above 20% height plane): 135 apartments
 - Total GFA contained in storeys that exceed the height (above 20% height plane): 12,649m²

If strict compliance with the building height standard was applied, then 12,808m² floorspace in the exceeding height component could not be achieved (without a poor urban design outcome), and thus, delivery of the affordable housing component would be significantly compromised. Therefore, strict compliance with the maximum building height standard is unreasonable, as it would compromise the delivery of approximately 135 affordable housing dwellings, and undermine the Government's policy intent to deliver more affordable housing through the in-fill affordable housing provisions of the Housing SEPP.

³ [Frequently asked questions – Housing targets | Planning](#)

4.1.6 The underlying purpose of section 87 (seniors housing) the Housing SEPP Affordable Housing would be thwarted if strict compliance is required (Third Method)

There are no specific objectives contained within Part 5 or section 87 of the Housing SEPP, however the underlying purpose of the provision is implied in the section itself. Namely, to incentivise seniors housing in zones where residential flat buildings or shop top housing is permitted where sites are 1,500m² or greater. If strict compliance with the maximum building height was applied by the consent authority, the delivery of seniors housing would be compromised, or would result in a very poor urban design outcome with loss of publicly accessible open space. Therefore, the underlying purpose of the seniors housing provisions would be thwarted, and in this light, compliance with the maximum building height standard is unreasonable.

Further, as identified earlier, it is a State Government priority to allow people to remain in their communities as they age, in environments which suit their needs and enable mobility and that have safe pedestrian links to transport and local facilities. Compromising delivery of seniors housing in Macquarie Park thwarts the purpose of the Housing SEPP provision to incentivise delivery of seniors housing in zones that permit RFBs and shop top housing, which is the case for the subject Site.

The following aspects of the proposal quantifies/demonstrates that the proposed variation to building height is capable of delivery the following seniors floor space, based on the indicative reference scheme:

- Seniors housing:
 - Total additional seniors housing floorspace sought through the Housing SEPP: 6,646m².
 - Total seniors housing units contained in the portions of the seniors housing buildings that exceed the maximum building height (above 3.8m height plane): 116 units
 - Total GFA contained in storeys that exceed the height (above 3.8m height plane): 16,533m².

If strict compliance with the building height standard was applied, then 16,533m² floorspace in the exceeding height component could not be achieved (without a poor urban design outcome), and thus, delivery of the seniors housing would be significantly compromised. Therefore, strict compliance with the maximum building height standard is unreasonable, as it would compromise the delivery of approximately 116 seniors housing dwellings, and undermine the Government's policy intent to deliver more seniors housing through the ILU and RCF provisions of the Housing SEPP.

4.1.7 Conclusion on clause 4.6(3)(a)

In summary, the proposed variation to building height has been demonstrated to be unreasonable and unnecessary as the objectives of the development standard have been achieved, notwithstanding the non-compliance with the standard. In particular:

- The height of each concept planning envelope ensures that the proposed concept masterplan is compatible with the street frontages of development, and has been tailored to respond to be in keeping with the character of nearby development and the future context / character of the surrounding areas;
- This written request has provided a detailed assessment in relation to overshadowing, bulk and scale, visual impacts, privacy, density, traffic, wind, flooding, and it is considered that the proposed variation will result in either improved, negligible or minor environmental impacts. Each concept envelope has been carefully considered and designed to minimise adverse environmental impacts upon surrounding residential development and public open spaces;
- A range of building heights across the site are proposed, from 16 to 24 storeys, including podiums ranging from two to four storeys. It is acknowledged that the locality is undergoing transformation (including the Macquarie park TOD Precinct by State Government), and that the height of development in the surrounding context is expected to increase, ranging between 45m to 190m. Notwithstanding the contravention to the development standard, the built form outcome across the site remains consistent with the overarching building height objectives in the RLEP 2014;
- This SSDA seeks to deliver 10% of 120% of the RLEP 2014 mapped FSR as affordable housing and a minimum of 70,000m² of seniors housing, which has been incentivised through the Housing SEPP provisions. Importantly, following design testing and analysis, the redistributed floorspace has been subject to solar sculpting analysis, and facilitates an approximate 1.1 ha publicly accessible open space. Strict compliance with the building height development standard would be unreasonable, as it would compromise the delivery of affordable and seniors housing, which would be at odds with the State Government's policy intent; and
- While this Request relates to additional height proposed above the building height development standards applied to individual towers, the proposed development must be assessed as a whole. The different heights and built forms across the precinct are importantly read as holistic urban design outcome. The suite of

concept envelopes are familial in nature, in their relationship of massing, marker buildings, separation, and tapering of height to achieve diversity. The outcomes achieved, such as a significant quantum of open space and minimal overshadowing impacts, are only through the collective floor space redistribution and additional height strategy and would not be achieved if the variation was assessed on a building by building basis.

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

Clause 4.6(3)(b) of the RLEP 2014 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. 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* at [24]).

In *Four2Five*, the Court found at [60] 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 concept masterplan on that site. In this instance the relevant aspect of the developments that result in the exceedance of the development standard are (in approximate number of storeys):

- **Lot 1 Tower 1:** 6 storeys
- **Lot 2 Tower 1:** 2 storeys
- **Lot 2 Tower 2:** 9 storeys
- **Lot 3 Tower 1:** Plant only
- **Lot 3 Tower 3:** 6 storeys
- **Lot 4 Tower 1:** 6 storeys
- **Lot 4 Tower 2:** 3 storeys
- **Lot 5B:** 6 storeys
- **Lot 6:** 6 storeys

There are sufficient environmental planning grounds to justify contravention of the building height development standard in this specific instance, as described below.

4.2.1 Ground 1: Redistribution of Floor Space for Public Domain and Landscaping

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

- *“A green and well cared neighbourhood with open space connected to housing.*
- *A neighbourhood with spacious and comfortable built form.*
- *A neighbourhood that is comfortable and safe to move and stay outdoors.*
- *A neighbourhood with diverse amenity and choice of activity.*
- *A well-connected neighbourhood that balances active and vehicular movement.*
- *A neighbourhood that has a mixed and diverse community.”*
 - Community Place Directions, BaptistCare Macquarie Park Place Strategy.

Key to this vision is to create a beautiful and sustainable interconnected network of high-quality streetscapes and publicly accessible open spaces that supports a walkable precinct with a range of active and passive recreational uses, promoting healthy lifestyle options and an overall sense of well-being amongst the community.

A key to this landscape vision is the creation and reinforcement of a strong ‘sense of place’ that reflects the character of the site and responds to the existing conditions and connects to its immediate surrounds. Ultimately, the landscape of the proposed concept masterplan is designed to enhance the social, economic and environmental value of the site and be a well-integrated positive addition to the broader Macquarie Park corridor.

The following sections demonstrate that despite the proposed variations to the building height development standard, the proposed concept masterplan will achieve a high quality public domain and landscaping outcome.

Redistribution of built form to create meaningful public open spaces

The amended proposed concept masterplan includes the removal of three buildings in the eastern portion of the site, which was originally proposed under the previously exhibited masterplan (refer to **Section 1.1** for greater detail). These buildings will be replaced by a significant 1.1 ha public open space. The aim is to deliver publicly accessible open space and community uses as part of the site's redevelopment, making these spaces more meaningful and intentional in response to feedback from the State Design Review Panel (SDRP), DPHI, and Council.

The generous provision of publicly accessible open space is made possible only through the redistribution of floor space to taller, slender towers that exceed the height standards.

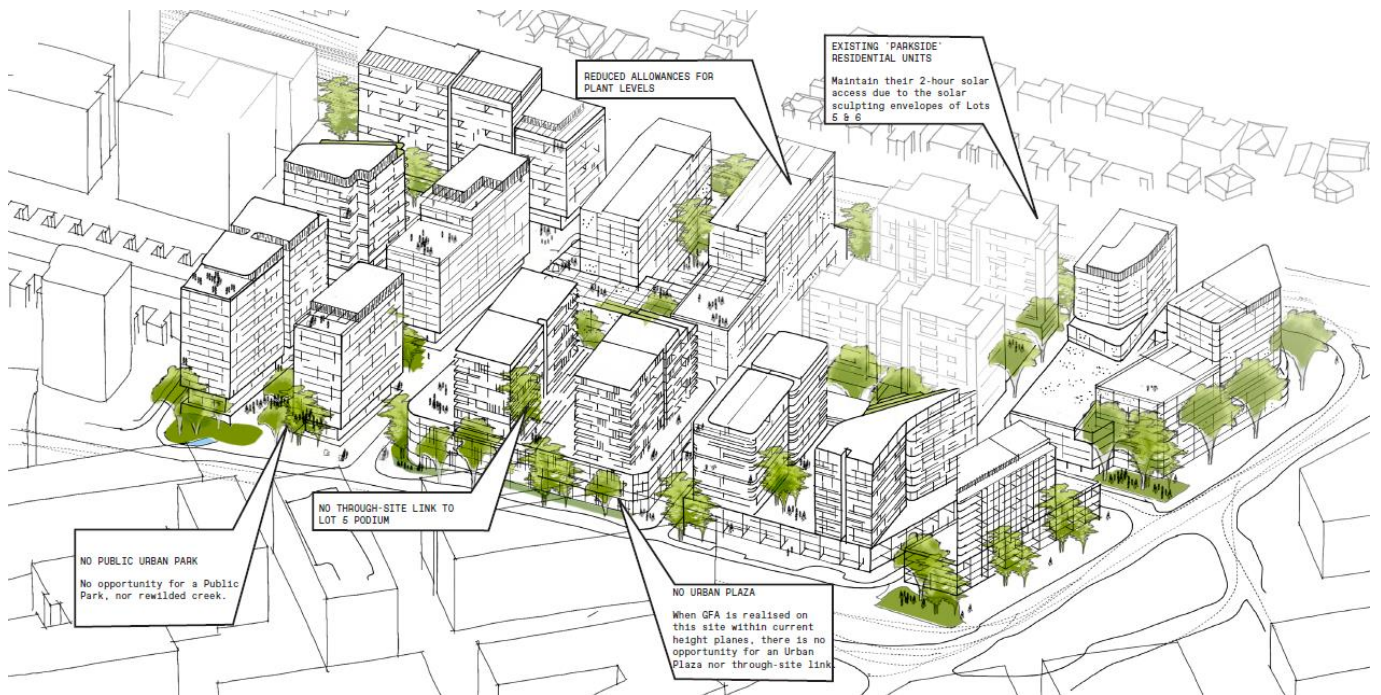
The Community Needs Strategic Alignment Study prepared by Ethos Urban (refer to **Appendix GG** of the Amendment Report) notes that the need to prioritise walking, cycling, and quality open spaces is foundational to several of the City of Ryde's strategic plans. It is highlighted as a priority in the City of Ryde Community Strategic Plan, with community feedback 'focusing on 'protections for green open spaces and street trees and more landscaping and green spaces around new developments' (pg. 10). The valuable health and wellbeing benefits of quality open space is highlighted in Council's Social Plan. The City of Ryde's Open Space Future Provision Strategy also notes that Macquarie Park has significant open space provision shortfalls and this will only be exacerbated as the population increases. It also states that provision of open space 'within development sites will create a better open space and recreation network and improved development outcomes'.

As such, the proposed concept masterplan has been designed to maximise local walking connection and encourage residents to participate in the day-to-day life of the place on foot. It includes a series of attractive, connected and welcoming green spaces to total 1.1 ha, including Kikkiya Park, pocket parks, potential for community BBQ areas, nature play all connected by a green boulevard with generous footpath widths, as illustrated in **Figure 38** and **Figure 39** below. This is in line with the Place Strategy's focus encouraging walking and cycling, enriching the pedestrian experience and delivering more quality public open space.

It includes a vibrant and lively public plaza fronting Macquarie University, adjoining space for cafes and restaurants, and retail where people can meet and socialise. The plaza includes public seating and tables to encourage longer stays, with small parks and extensive tree canopy to create an intimate, welcoming and social space. This central space is level, vibrant and active, focusing on calmed traffic flows and providing versatile gathering spaces to act as a setting for multi-generational events. This is in line with the intent for the proposed concept masterplan to focus on creating more quality public areas, creating spaces to bring people together and creating neighbourhoods that bring about more cultural, social and visitor uses. The opportunity for deep soil is provided for large tree planting along the Central Boulevard, which acts as a through-site link connecting the Urban Plaza to Kikkiya Park. The generous proportions of this through-site link are able to be accommodated due to the redistribution of built form, providing space to further activate through retail offerings and an all-weather, undercover linkage through lot 2 within the eastern portion of the site.

Provision of the tree-lined Central Boulevard will also act as a key public space across the site, allowing for a diversity of character in spaces. The generous proportion of the main Boulevard allows for greenery and significant tree canopy to permeate the site, enhancing the urban design and amenity of the proposal.

As illustrated in **Figure 36**, if the proposed development was to achieve a building height compliant scheme, this public open space would not be possible, resulting in a lack of meaningful public open space benefiting both residents and the broader community.



Building height compliant scheme



Proposed concept masterplan

Figure 36 Comparison of building height compliant scheme against proposed concept masterplan

Source: BVN

Naturalising of Kikkiya Creek

As stated above, the generous provision of publicly accessible open space is made possible only through the redistribution of floor space to taller, slender towers that exceed the height standards. The publicly accessible space includes the naturalising of Kikkiya Creek, which will be a significant natural asset to enrich the open space, as outlined below.

Connecting with Country has been an integral part of the design process since inception (refer to **Appendix V** of the Amendment Report). In response to feedback received from DPHI, Council and government agencies, the design team revisited their approach, particularly in relation to designing with Country. This revision process

provided an opportunity to reconnect with the Aboriginal identity and culture of the site, with Fellingham Consultancy and Design (FCAD) leading the process as the Designing for Country consultant.

A Walk on Country was undertaken, and a process initiated to engage with Elders. This engagement led to significant evolution of the proposed concept masterplan from the previously exhibited masterplan. Key changes from the previously exhibited masterplan include the creation of a new public open space, and the rewinding of Kikkiya Creek, which runs north-south along the eastern portion of the site. It is noted that the extent of Kikkiya Creek was previously proposed as an underground engineered solution within the exhibited proposal. In comparison, within the exhibited proposal, areas of open space were located in between building envelopes in the form of the Eastern Park (0.6ha) and School Open Space (0.22ha) – not publicly accessible - as shown in **Figure 37** below.

Through this Connecting with Country process, the eel creation story known as BIAMI emerged, now central to the new public open space concept. The design also directly addresses the Wallumattagal people's connection to water by featuring running, gushing, and still water a focal point of the public open space. The exposed creek visually connects to the existing creek line through the Macquarie University Campus and Lane Cove National Park.



Previously exhibited Kikkiya Creek corridor landscape arrangement



Proposed amended concept masterplan Kikkiya Creek corridor landscape arrangement

Figure 37 Comparison of as lodged and amended Kikkiya Creek corridor landscape arrangement

Source: Arterra

Subsequently, through the extensive Connecting with Country studies, the proposed concept masterplan seeks to extend the existing creek line through the site to rehabilitate Kikkiya Creek. This promotes a green and blue continuity with the surrounding landscape and produces an enhanced riparian buffer. This generous naturalistic open space, Kikkiya Park, showcases water in various forms and creates a diverse range of accessible, heavily planted landscapes alongside open recreational areas, as illustrated in **Figure 38** and **Figure 39**

below. These spaces seamlessly connect with Epping Road, Macquarie University, and the principal north-south roadway. Kikkiya Park also provides an alternative space to what is provided in the surrounding network by providing opportunities for the community to connect to Country and the natural environment with nature play and a range of discovery paths inside the park that allow for people of all abilities to explore and connect with nature.

Kikkiya Park is intended to be relatively naturalistic open space that embraces and showcases water and nature and provides a variety of planted and more open areas with accessible boardwalks, bridges and walkways. There is an opportunity to provide multi-generational spaces which have the potential to further interact with the adjacent naturalistic waterway. These gathering spaces include some of the existing mature native and endemic trees that provide a mature tree canopy and feature from the initial establishment of the park. These trees would be further supplemented by additional native trees and understorey landscaping. Facilities can potentially include accessible pathways and shelters, seating, a BBQ area, a small off-leash dog exercise area, fitness and playground equipment. Numerous residential towers will also overlook and engage with this space, enhancing additional opportunities for surveillance and activation.



Figure 38 *View of Kikkiya Park from the Lot 1 podium, looking north-east*

Source: BVN



Figure 39 View of Kikkiya Park from near Epping Road, looking north-west

Source: BVN

Deep Soil and Tree Retention

The generous provision of deep soil, as well as increased tree retention, is made possible only through the redistribution of floor space to taller, slender towers that exceed the height standards.

The proposed concept masterplan exceeds the deep soil requirements applicable to the site under the Housing SEPP, ADG and the RDCP 2014. The RDCP 2014 stipulates a minimum deep soil of 20% of the site area (which is a more onerous requirement compared to the Housing SEPP and ADG, which requires 7%). The proposed concept masterplan provides 24% deep soil. This has been achieved through key amendments to the proposed concept masterplan, as well as the additional height proposed above the building height development standards the subject of this Request, which is now capable of accommodating greater deep soil than what was previously exhibited (refer to **Table 4** and **Figure 40** for a comparison). Notably, this was a result of the amendments to the public open space layout, internal road network and siting of the super-lots (all facilitated by more constrained building footprints that benefit from greater height), resulting in an increase in available deep soil area throughout the site.

Table 4 Comparison between exhibited proposal and proposed amended concept masterplan indicative deep soil quantum

Previously exhibited deep soil	Amended concept masterplan deep soil	Change
15,111m ² (equating to 23% of the site area)	15,629m ² (equating to 24.47% of the site area)	+1.47%

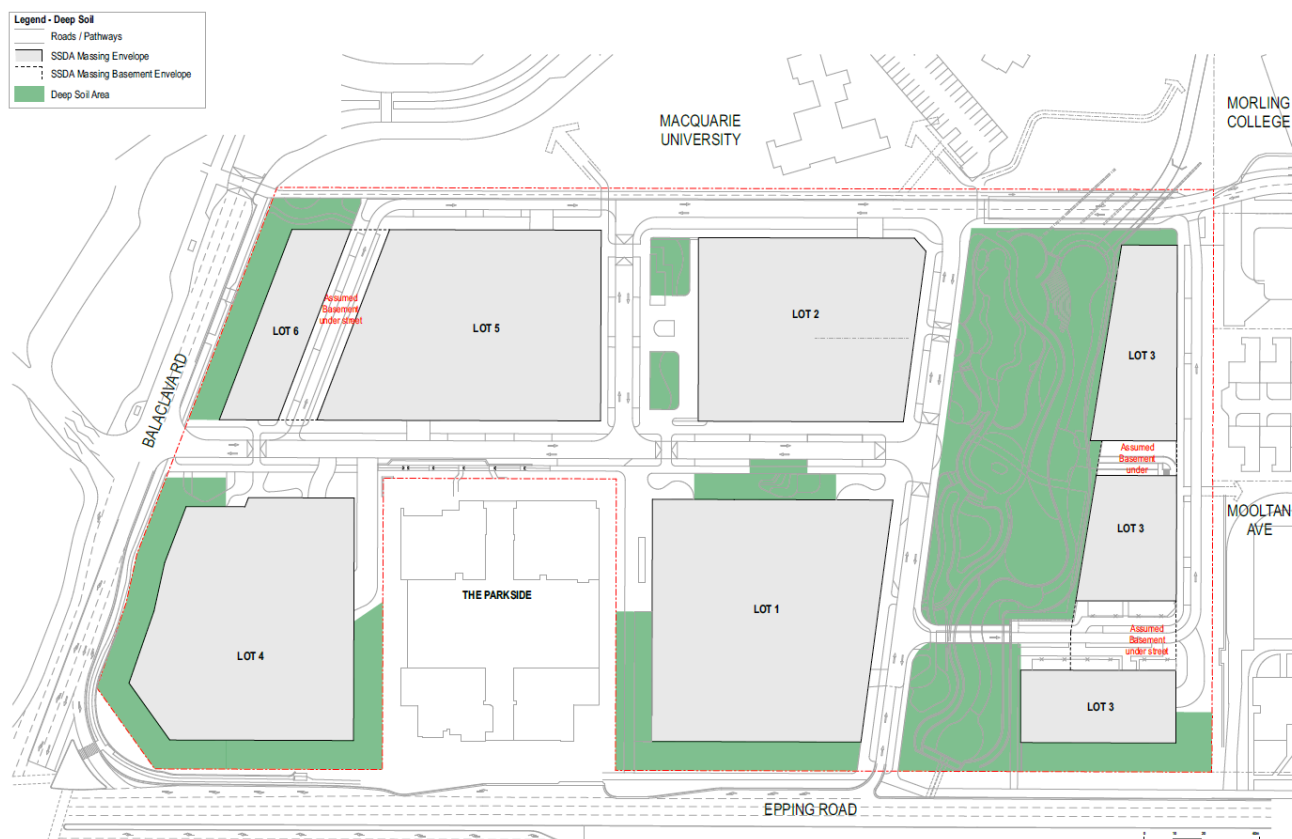


Figure 40 *Proposed concept deep soil*

Source: Arterra

The objective of deep soil controls is to enhance the landscaping area whilst limiting the footprint of the building envelopes. The proposed development incorporates a reference 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, including at the eastern portion of the site through the rehabilitation of Kikkiya Creek into significant public open space.

The canopy trees are proposed to extend the length of the southern and western perimeter boundary in order to provide a strong landscape buffer, totalling 38% 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.

Rather than providing the minimum deep soil and tree canopy cover requirement, the proposed concept masterplan, with additional height proposed above the building height development standards, provides significantly more deep soil area and tree canopy cover through reducing the building area and redistributing that GFA into taller, slender towers.

In comparison, if as per the compliant height scheme additional built form was located in place of Kikkiya Park, Arterra confirm that the following additional trees would be required to be removed:

- T70 (*Syncarpia glomulifera*)
- T71 (*Eucalyptus resinifera*), and
- T87 (*Corymbia maculata*)

Trees T70 and T71 are large, endemic trees that have been identified as being part of an Endangered Ecological Community (EEC). They are environmentally significant and offer habitat value within the site. Tree T70 is a 'high' retention value tree and tree T71 is a 'moderate' retention value tree. Tree T87 is a 'high' retention value tree that is large and visually prominent within the site. It has excellent form, good vigour and offers significant aesthetic and environmental value.

The significant loss of deep soil and loss of additional significant trees on the site, resulting from a height compliant scheme, would therefore represent a significantly worse ecological, environmental and arboriculture outcome.

Safe Flood Management

The generous provision of publicly accessible open space, which directly facilitates flood management, is made possible only through the redistribution of floor space to taller, slender towers that exceed the height standards.

As detailed in **Section 4.1.1** above, the amended concept masterplan demonstrates an improvement in projected flood impacts compared to the previously exhibited masterplan. This enhancement is primarily due to the rehabilitation of Kikkiya Creek. The rehabilitation restores the original creek line by reintroducing a naturalised waterway that extends from Epping Road to Macquarie University. This naturalisation not only mitigates flood risks, but also enhances the ecological value and aesthetic appeal of the area, contributing to a more sustainable and resilient urban environment.

A Design Guidelines document has been prepared by BVN (refer to **Appendix J** of the Amendment Report) which includes flood management guidelines. This document will serve as a crucial tool in guiding future development for the proposed concept masterplan.

It is noted that the exhibited proposal sought to mitigate flood impacts through utilising an engineered underground solution within the eastern section of the site. This resulted in several development lots including buildings within the flood zone.

If not for the relocation of floor space outside of flood prone area on the site, the significant improvement to management of the flood hazard would not have been achieved. Further, without the redistribution of this floor space to additional height proposed above the building height development standards across the site, flood management would have been achieved at the cost of affordable and seniors housing.

4.2.2 Ground 2: Additional Housing in a Precinct Undergoing Significant Transformation

As outlined in **Section 2.2.2**, there is no existing planning requirement to deliver affordable and seniors housing as part of the project. However, the provision of affordable and seniors housing is identified as a planning priority in both City of Ryde Council and NSW Government planning policies. The feasible delivery of affordable housing utilising the relevant provisions of the Housing SEPP is only possible through the proposed variation to the maximum building height.

Section 2.2.2 details how the delivery of affordable and seniors housing is the principle environmental planning ground to justify the building height contravention, as the removal of additional height proposed above the building height development standards will directly result in the development being unable to deliver affordable housing, and compromise delivery of seniors housing. The exceedance to the maximum building height reflects the superior urban design outcome with significant open space, which would otherwise not be achieved and result in an exceedingly dense built form arrangement, lacking any meaningful open space. As a consequence, the building height variation directly facilitates the significant public benefit and clear environmental planning grounds in delivering affordable and seniors housing, including:

- Ensuring that, as the cost of housing increases in the City of Ryde, housing is provided for very low to moderate income households;
- Ensuring that there are opportunities for very low to moderate income earners who work in the City of Ryde and surrounding areas to live in the community in which they are employed;
- Facilitating economic development and the delivery of critical economic and social services to the community by ensuring that workers employed within lower-paid occupations are able to live within proximity to workplaces;
- Providing opportunities for very low to moderate income households already living within Macquarie Park and the City of Ryde to remain within their community whilst the market cost of housing continues to escalate. This is critical in ensuring that pre-existing social connections within the community are maintained;
- Ensuring that the City of Ryde continues to provide housing for a diverse spectrum of the population across a range of socioeconomic backgrounds, including those groups which tend to find obtaining market-priced housing more challenging including young people, single parent families, new migrants and other social groups; and
- A significant amount of GFA is dedicated to seniors housing, which would be unable to be economically delivered without the proposed quantum of housing.

These, and other benefits, of providing affordable and seniors housing are only possible due to the proposed variation to the building height development standard. The alternative, being a development that is wholly compliant with the building height development standard, would compromise the ability to provide a significant amount of affordable housing and a poor urban design outcome, resulting in a significantly worse environmental planning outcome.

4.2.3 Ground 3: Future Built Form

Each concept envelope has been carefully considered in relation to building height, building separation, podiums and upper level setbacks. The proposed concept envelopes have been designed to deliver a sympathetic response to the existing and future surrounding context, and respond to the future public domain requirements. In particular, there are several design principles that have been adopted across the site, which demonstrates a coherent and holistic design approach, including:

- The concept envelopes of the proposed Masterplan aims to provide a sympathetic response to the surrounding urban context through the transition of building heights from 16 to 24 storeys, creating a transition in height. The concept masterplan also locates additional envelopes within 'marker buildings', which have been strategically located. These marker buildings demarcate gateways to the site and greater precinct, adding legibility and activation, as well as referencing the wider urban built form within the Macquarie Park precinct;
- The design of the development with respect to massing is considered to respond appropriately to the curtilage of the site and surrounds. The proposed concept envelopes are considered to provide opportunities to promote good vertical and horizontal articulation of buildings, thereby enhancing the architectural quality and visual appearance of the development when viewed from the public domain. This will be partly achieved by promoting a human scale to residential streets in the form of 2-4 storey wall heights, as shown in **Figure 41**. It is considered that the variation to building height will not result in a development of excessive bulk and scale;
- Carefully analysed sculpting of the additional height proposed above the building height development standards to deliver an outcome that does not pose any additional adverse overshadowing impact. In association, the sculpted and tapered forms enhance the sense of diversity achieved across the familial set of towers; and
- The form and massing of buildings have been enhanced through provision of generous building separation accordance with the design principles of the Housing SEPP and the ADG.

The future built form that will result from each proposed concept envelope, notwithstanding the additional height proposed above the building height development standards, continues to demonstrate a clear relationship and minimisation of adverse environmental impact with respect to the existing and future context of Macquarie Park.



Figure 41 Pedestrian view of the proposed Urban Plaza looking north east

Source: BVN

4.2.4 Ground 4: Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed concept masterplan should be consistent with the objects of the Act, nevertheless, as set out in **Table 5** we consider the proposed concept masterplan is broadly consistent with each object, notwithstanding the proposed variation of the building height development standard.

Table 5 Assessment of consistency of the proposed development with 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	The proposed variation to the building height standard facilitates the provision of affordable and seniors housing, along with student accommodation, in a well-served location. This approach promotes the social welfare of the community by effectively utilising existing infrastructure and revitalising an underutilised site
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed variation to building height enables ESD principles to be delivered: • The provision of affordable housing promotes a socially sustainable, inclusive and equitable community within Macquarie Park. • Diverse housing tenure types are accommodated (affordable housing, co-living and housing), further facilitating a socially sustainable development. • Improvements to the ecological value of the site and continued management of biodiversity. • Successfully mitigating urban heat island effects through delivery of significant landscaped and deep soil area.

Object	Comment
	Refer to the ESD Report (Appendix U to the Amendment Report) for further discussion.
(c) to promote the orderly and economic use and development of land	The variation promotes the orderly and economic use and development of land by facilitating the take-up of additional floorspace permitted by the Housing SEPP to facilitate the delivery of affordable and seniors housing. The variation enables this to occur in an orderly and economic manner by allowing the distribution of this housing floorspace on the parts of the land that are most suitable for this to occur. This allows for the post-development use of the site to continue to provide local employment opportunities and increases the residential density (with affordable and seniors housing) of the site commensurate to its location close to transport linkages, and a wide variety of services and facilities.
(d) to promote the delivery and maintenance of affordable housing	The proposed development, owing to the variation to building height, clearly delivers this object as it enables the provision of affordable and seniors housing dwellings. Council's local policy identifies a lack of affordable housing in the City of Ryde, and this proposal makes a substantial provision of this housing type. As a not-for-profit organisation, BaptistCare is a community housing provider as defined in the Housing SEPP and will therefore be well-positioned to manage the delivery of affordable housing.
(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 development, inclusive of the variation, continues to satisfy this objective.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The proposed development, inclusive of the variation, continues to satisfy this objective.
(g) to promote good design and amenity of the built environment	As discussed in Section 4.1.1 , the proposed variation to building height continues to promote and preserve local amenity with regard to solar access, bulk and scale, views, visual impact, flooding, density, traffic and wind. The variation promotes good design and amenity of the built environment by enabling the delivery of a contemporary and high-quality design. BVN has designed the concept envelopes with regard to the urban context relevant to the site.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, can comply with the relevant provisions of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The variation arises as a direct result of the Housing SEPP provisions that incentivise the provision of affordable housing in order to address national and NSW Government policy priorities in respect of housing affordability, including as set out under the <i>National Housing Accord</i>. The proposed development is SSD and therefore will be assessed by DPHI with the consent authority being the Minister (or delegate of). Relevant government authorities have been engaged with and will be notified of the proposed development and invited to comment, including the City of Ryde Council.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The Engagement Outcomes Report (Appendix R to the Amendment Report) identifies that early community consultation was undertaken on the proposed contravention to the building height development standard. Post lodgement, the proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

4.2.5 Conclusion on clause 4.6(3)(b)

There are sufficient environmental planning grounds to justify a contravention of the development standard, as follows:

- Contravening the development standard allows the proposed development to provide better solar amenity outcomes to neighbouring developments as well as to the residents, as well as a significantly improved urban design outcome with the creation of 1.1 ha public open space, while enabling the delivery of affordable and social housing;
- The proposed development, inclusive of the proposed variation, retains the ADG minimum extent of direct solar to neighbouring developments, and does not present any additional adverse environmental impact when compared with a building height compliant scheme, particularly to The Parkside and Macquarie Village.
- The redistribution of floor space to taller, slender towers to create Kikkiya Park has resulted in a significantly better response to the site's flood hazards during a Probable Maximum Flood (PMF) event; and
- The proposal is consistent with the objects of the EP&A Act, namely the delivery of affordable and seniors housing. The variation to building height enables the delivery of affordable and seniors housing which facilitates a socially sustainable development, thereby reinforcing that the contravention to the development standard results in a superior planning outcome;

5.0 Conclusion

The assessment above demonstrates that compliance with the building height development standards contained in the Housing SEPP provisions for in-fill affordable housing and seniors housing, as well as clause 4.3 of the RLEP 2014, is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, facilitating delivery of a significant quantum of diverse housing (including affordable, seniors housing and co-living housing), whilst also achieving a better outcome in planning and urban design terms.

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

- Compliance with the development standards would be unreasonable and unnecessary, because the proposal is consistent with the objectives of the relevant Housing SEPP divisions and 4.3 of the RLEP 2014 in that:
 - The proposed building heights sit comfortably in its urban context and is compatible with the existing and desired future character of Macquarie Park;
 - The proposed concept planning envelope heights vary and include marker buildings, as achieving a diversity of built form, urban markers and gateways to the site and broader precinct, referencing the wider urban built form along Epping Road. These marker buildings are complemented by lower buildings, facilitating increased solar access to open space and residents; and
 - 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.
- Strict compliance with the development standard would be unreasonable as it would thwart the efforts of the NSW Government to deliver affordable housing, and compromise the delivery of affordable housing dwellings in an area identified with a lack of affordable housing, as well as seniors housing in an area well-suited to aging in place;
- There is no public benefit in maintaining the building height development standards adopted by the environmental planning instrument for this site given the particular circumstances described in this request;
- There are sufficient environmental planning grounds to justify the contravention, including:
 - The building height variation is necessary to facilitate the delivery of affordable and seniors housing within the proposed concept masterplan, utilising the Housing SEPP incentives in circumstances where there is no local planning requirement to do so. The variation therefore directly supports the significant social and economic benefits arising from providing affordable and seniors housing, and these benefits would not be realised in a development that complied with the building height development standard;
 - The alignment with the national and State planning policy objectives to deliver more housing, including affordable and seniors housing, in well-located areas supported by infrastructure. The building height variation arises from the use of additional floorspace that is incentivised and complies with the Housing SEPP, and in doing so directly supports the provision of additional affordable and seniors housing, which is a significant public benefit and environmental planning ground that justifies this variation. A building height compliant scheme would result in a very poor urban design outcome and compromise delivery of affordable housing and seniors housing, which is a poorer environmental planning outcome in environmental, social and economic terms; and
 - The 1.1 ha publicly accessible open space (including Kikkiya Park) is a significant benefit for the wider community, providing opportunities for the community to connect to Country and the natural environment with nature play and a range of discovery paths inside the park that allow for people of all abilities to explore and connect with nature; and
 - A superior built form and urban design outcome is achieved by:
 - Solar sculpting to concept envelopes to maximise solar access to neighbouring properties, as well as to the residents of the proposal;
 - Minimising the building footprint to create slender building forms that enable opportunities for landscaping and publicly accessible open space; and
 - Creation of more quality public areas, creating spaces to bring people together and creating neighbourhoods that bring about more cultural, social and visitor uses.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the RLEP 2014 and may grant development consent notwithstanding the contravention of the building height development standard.