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## 1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban for Aspire Consortium on behalf of NSW Land and Housing Corporation. It is submitted to the Department of Planning and Environment (DP&E) in support of a State Significant Development Application (SSDA) for the redevelopment of Ivanhoe Estate at Macquarie Park (SSD DA\_8707) and has been prepared in response to refinements made to the Ivanhoe Estate Concept Masterplan in addressing the range of matters raised by government agencies, authorities and the general public following two public exhibition periods.

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

- Reduction in the total GFA from 278,000m<sup>2</sup> to 268,000m<sup>2</sup>
- Increased envelope setbacks to Epping Road to preserve the Sydney Turpentine Ironbark Forest.
- Retention of additional existing trees
- Improved interface with the Shrimptons Creek riparian corridor
- Redistribution of GFA in the form of increased building height to enable the above design improvements
- Deletion of left in and left out access road to Epping Road

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

This clause 4.6 variation request relates to the development standard for Floor Space Ratio under clause 4.4 of the Ryde LEP and should be read in conjunction with the Response to Submissions Report No. 2 (RTS No. 2) prepared by Ethos Urban dated September 2019 and with the RTS Design Report prepared by Bates Smart.

This clause 4.6 variation request demonstrates that compliance with the maximum floor space ratio (FSR) development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

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

- Results in a better planning outcome by strategically redistributing bulk and scale;
- Achieves the objectives of Clause 4.4 of the Ryde LEP;
- Provides a public benefit through the provision of a unique mix of housing tenures supported by community facilities and open space all in close proximity to transport and jobs.
- Will not result in any adverse environmental impacts as a result of the variation to the maximum FSR; and
- Is considered to be in the public interest.

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

## 2.0 Clause 4.6 Variations

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

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

#### **4.6 Exceptions to development standards**

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

## 2.1 Is the Planning Control a Development Standard?

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

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

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

The maximum floor space ratio (FSR) control under clause 4.4 of the Ryde LEP is clearly and unambiguously a development standard.

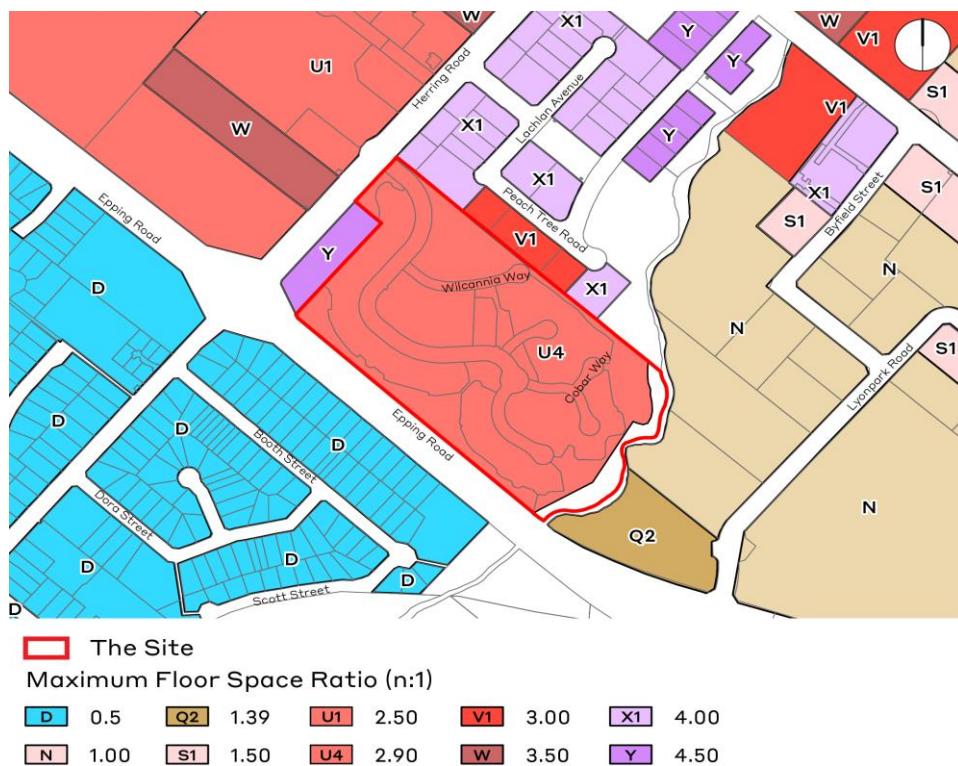
## 3.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.4 of the Ryde LEP. Clause 4.4 of the Ryde LEP is reproduced below in its entirety and an extract of the Floor Space Ratio Map, to which that clause applies, is reproduced in **Figure 1**.

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

- (a) to provide effective control over the bulk of future development,*
- (b) to allow appropriate levels of development for specific areas,*
- (c) in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

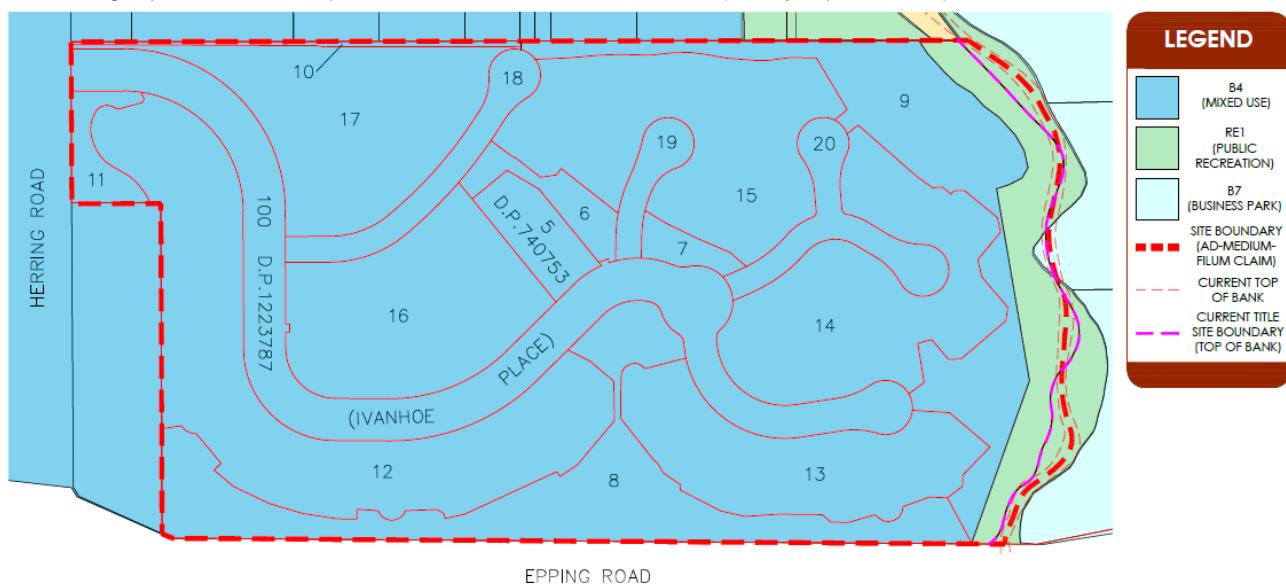


**Figure 1 – FSR Map**

Source: Ryde LEP / Ethos Urban

### 3.1 The Land Subject to this Clause 4.6 Variation

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



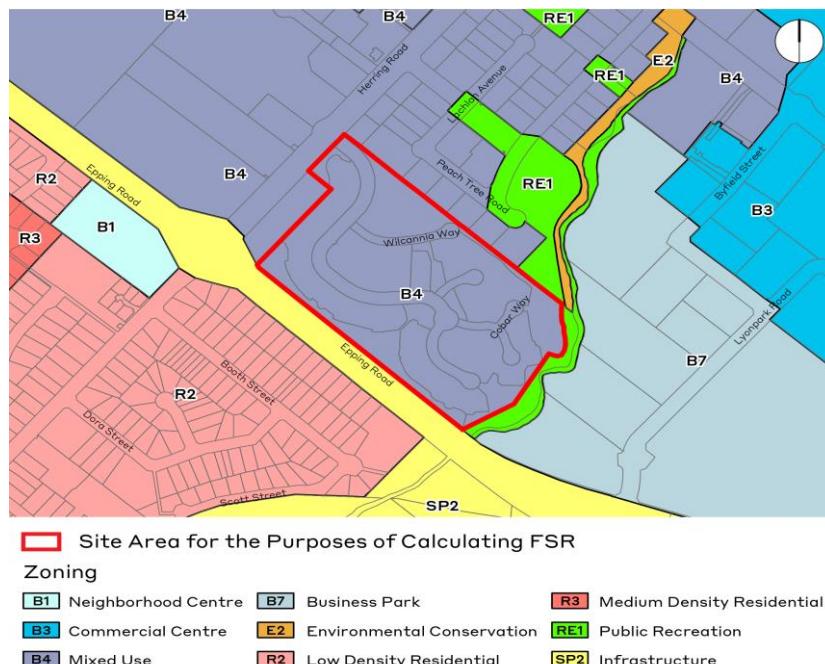
**Figure 2 – Lot Boundaries and Zoning**

Source: ADW Johnson

For the purpose of calculating the maximum allowable FSR for the site, the site area has been limited to the portion of land zoned B4 Mixed Use as shown in **Figure 3**. The area of the land zoned RE1 Public Recreation within the site boundary (approximately 4,150m<sup>2</sup>) and the area of the land zoned B7 Business park within the site boundary

(approximately 99m<sup>2</sup>) has been excluded from the calculation of site area. Furthermore, the entire area of Lot 1 DP 859537 (2-4 Lyonpark Road) has also been excluded from site area.

Therefore, the site area equates to approximately 78,680m<sup>2</sup> which accounts for all of the land zoned B4 Mixed Use which is subject to an FSR of 2.9:1.



**Figure 3 – Site Area**

Source: Ryde LEP/Ethos Urban

### 3.2 Site Context

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

The site is located within the Macquarie University Station Precinct which forms part of the broader Macquarie Park corridor. The Precinct is characterised by a mix of new high density residential uses, older low scale residential flat buildings, the Macquarie Shopping Centre and Macquarie University. Macquarie University Station and Macquarie Shopping Centre are approximately 500 metres north east of the site. The Macquarie Park corridor is a key employment centre, which accommodates a significant number of businesses and research facilities in medium-scale commercial development.

The Precinct is intended to deliver a significant number of dwellings by 2031, transforming the area into a vibrant centre that makes the most of the available transport infrastructure and the precinct's proximity to jobs, retail and education opportunities within the Macquarie Park corridor. The Precinct has FSRs that range from 2.5:1 up to 4.5:1.

The broader Macquarie Park corridor is identified as the third largest centre for employment in Greater Sydney behind the Sydney CBD and Greater Parramatta. By 2036, Macquarie Park is projected to deliver between 73,000 and 79,000 jobs.

### 3.3 FSR Framework

#### 3.3.1 Ryde Local Environmental Plan 2014

As outlined in Section 3.1, the site area is 78,680m<sup>2</sup> which is subject to a maximum FSR of 2.9:1. Therefore, the site is able to accommodate a GFA of 228,172m<sup>2</sup> pursuant to the Ryde LEP.

### 3.3.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

The Concept SSDA will seek to utilise the GFA bonus pursuant to clause 13 (2) (b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) which is reproduced below:

- (1) *This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*
- (2) *The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:*
  - (b) *if the existing maximum floor space ratio is greater than 2.5:1:*
    - (ii) *Z per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where:*

*AH is the percentage of the gross floor area of the development that is used for affordable housing.*

$$Z = AH \div 2.5$$

The GFA of the development that is being used for affordable housing is 72,999m<sup>2</sup>. This equates to 33% of the total residential GFA under the maximum allowable GFA of 228,172m<sup>2</sup>. On this basis, the bonus GFA available under the SEPP ARH can be calculated as follows:

*Affordable Housing (AH GFA) = 72,999m<sup>2</sup>*

*AH as a % of residential development = 72,999 / 220,443 (residential GFA only, excluding proposed non-residential GFA) = 33%*

$$Z = 33 / 2.5$$

$$= 13.2\%$$

$$FSR \text{ bonus} = 0.132 \times 2.9$$

$$= 0.38:1$$

$$\text{New FSR (including SEPP ARH bonus)} = 0.38 + 2.9$$

$$= 3.28:1$$

$$\text{Additional GFA} = 29,898\text{m}^2$$

The GFA available under the ARH SEPP results in a maximum allowable GFA of 258,070m<sup>2</sup> for the site which represents an FSR of 3.28:1 as depicted in **Table 1**.

It is prudent to note that notwithstanding the ARHSEPP calculation that has been applied in **Table 1**, the maximum bonus of 20% has not been applied to the entirety of the residential component which could otherwise apply given that the land is owned by NSW Land and Housing Corporation pursuant to Clause 6 (2) of the ARH SEPP.

**Table 1 – Maximum Allowable GFA / FSR**

	FSR	Site Area (m <sup>2</sup> )	GFA (m <sup>2</sup> )
B4 Zoned Land	2.9:1	78,680	228,172
Affordable Housing Bonus	0.38:1	78,680	29,898
<b>Total</b>	<b>3.28:1</b>	<b>-</b>	<b>258,070</b>

### 3.4 Nature and Extent of this Clause 4.6 Variation

This variation comprises three separate components which are discussed in further detail below and include:

- Community Benefit GFA (6,769m<sup>2</sup>)

- Seniors Housing Bonus GFA (4,892m<sup>2</sup>) and On-Site Support Services (1,200m<sup>2</sup>)
- RE1 Land (4,150m<sup>2</sup>) and B7 Land (99m<sup>2</sup>) adjacent to Shrimptons Creek

### **3.4.1 Community Benefit GFA**

The Concept SSDA encapsulates a diverse range of 'community benefit' land uses which include the following:

- School
- Childcare
- MAH Offices
- Community Hub (Public and Private)

The quantum of community benefit land uses will comprise a total of 6,769m<sup>2</sup>. These uses do not reflect the highest value land uses, and in some cases, will generate no revenue at all. However, they are considered to enrich the site and assist with a wide range of social outcomes for the community of Ivanhoe and the broader Macquarie Park population. The delivery of the community benefit GFA is therefore critical to delivering the desired social outcomes for the Ivanhoe Estate and has therefore been included as a variation above the FSR standard.

It is noted that if the community uses were provided in lieu of residential uses, there would be an associated reduction in the provision of social and affordable housing on the site. The merits of the community benefit GFA are discussed in detail in Section 4.0.

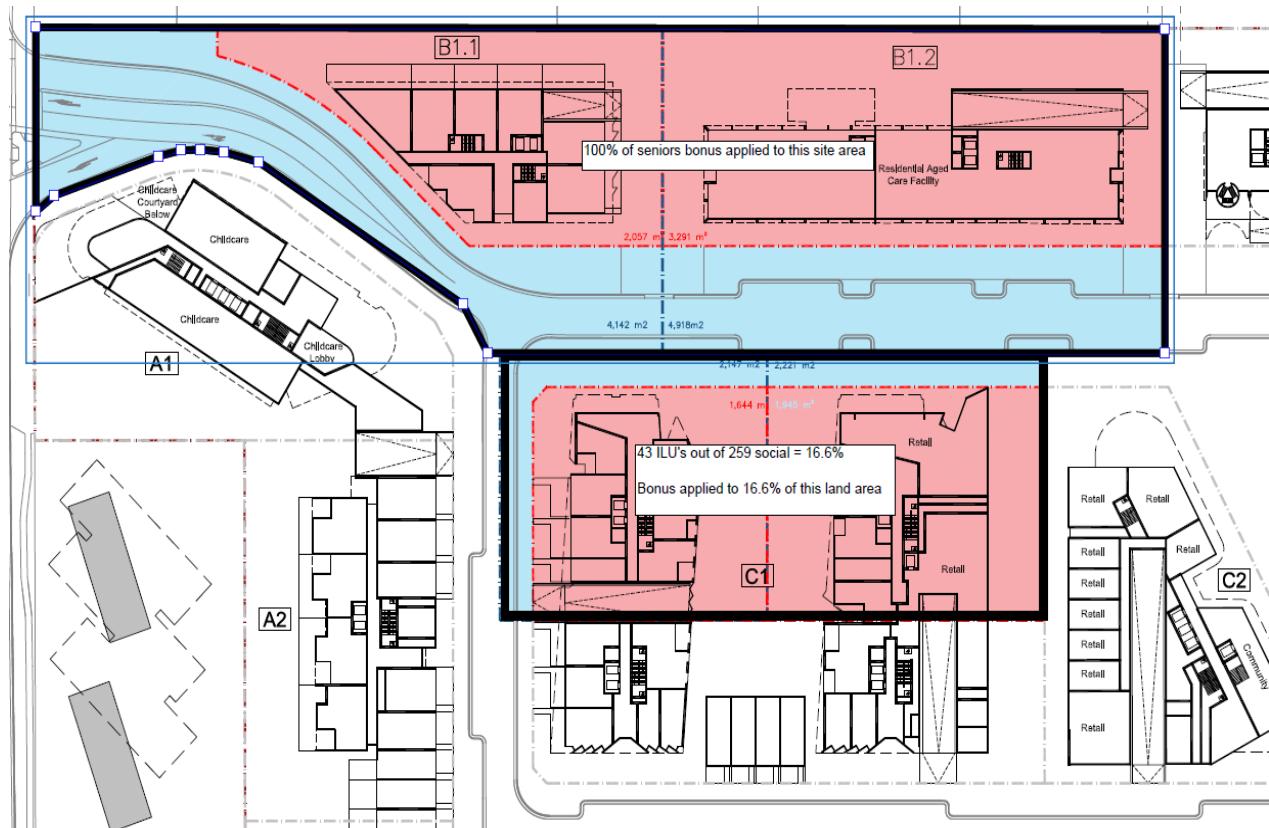
### **3.4.2 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

The Concept SSDA will comprise of senior housing in the form of independent living units and a residential aged care facility consistent with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Clause 45 of the Seniors SEPP allows a consent authority to consent to a development application for the purpose of seniors housing involving buildings having a density and scale (when expressed as a floor space ratio) that exceeds the floor space ratio by a bonus of 0.5 to the GFA component of the FSR. The 0.5 bonus is predicated on providing at least 10% of the dwellings as an affordable place in addition to on-site support services.

By virtue of clause 18(2) the DA cannot be made pursuant to the Seniors SEPP as the Masterplan relates to a mixed use development, and not an exclusively seniors housing development. Nevertheless, if the seniors housing component were to be delivered as a stand-alone development, the bonus GFA available under the Seniors SEPP would be applicable to the Site.

In this respect, it is prudent to consider the quantum of GFA available under Clause 45 of the Seniors SEPP given that the Concept SSDA will satisfy the principal objectives of the bonus GFA by providing affordable seniors places and on-site support services consistent with the State policy.

The site area of the seniors housing component is 9,785m<sup>2</sup> equating to an additional 4,892m<sup>2</sup> of potential bonus GFA. As wholly seniors housing buildings, the bonus has been applied to the entire site area of Lot B1.1 and B1.2 including the minimum amount of land required to access those buildings. Additional seniors dwellings are also located within Building C1, accordingly the bonus available under the Seniors SEPP has been calculated at 16.6% of the site area of Lot C1 on the basis that 43 of the 259 dwellings within Lot C1 will be occupied by seniors or people with a disability. **Figure 4** depicts the proposed site area of the seniors housing component.



**Figure 4 – Site Area of Seniors Housing**

Furthermore, the Residential Aged Care Facility within Lot B1.2 will include the provision of 1,200m<sup>2</sup> to be used for the purposes of on-site support services. Pursuant to Clause 45(4) of the Seniors SEPP, the area dedicated to the provision of on-site support services can be excluded from the calculation of gross floor area as stipulated below.

(4) *In calculating the gross floor area for the purposes of subclause (2), the floor space used to deliver on-site support services (other than any floor space used to deliver communal or residents' living areas) is to be excluded.*

In this regard, the GFA attributed to on-site support services is proposed to be excluded from the overall proposed GFA in order to incentivise the provision of affordable seniors housing within Lots B1.1, B1.2 and C1 and in accordance with the aims of the Seniors SEPP.

### 3.4.3 Rehabilitation of Shrimptons Creek Riparian Corridor

The Ivanhoe Estate comprises a large portion of RE1 Public Recreation zoned land and B7 zoned land within the current site boundary adjacent to Shrimptons Creek. The total area of the RE1 zoned portion of land within the site is approximately 4,150m<sup>2</sup> and the area of the B7 zoned portion of land is approximately 99m<sup>2</sup>. It is noted that the B7 zoned portion of land is subject to an FSR of 1:1 under the LEP. Whilst there is no FSR allocated to the RE1 zoned portion of the land, it is prudent to consider the costs associated with the provision of public infrastructure and the overall benefit of the development to the enhancement and active use of Shrimptons Creek.

This area of the site will be rehabilitated and embellished to restore the Shrimptons Creek corridor immediately adjacent to the site. Shrimptons Creek will provide a mixture of riparian planting and recreation facilities that will be publicly accessible. A 20-metre riparian corridor will be provided in accordance with the NSW Office of Water Guidelines for riparian corridors on waterfront land. In accordance with these guidelines, a shared pedestrian and cycle path will be provided in the outer riparian zone, with commensurate offset planting to be provided adjacent to the corridor. The corridor is an important landscape and recreational spine and connects the site to the Macquarie

Centre and parklands. Rehabilitation works will be undertaken to improve the existing creek setting, as well as improvements to the Epping Road underpass and provision of new recreation facilities.

For this reason, given the enhancement and curtilage of Shrimptons Creek within the site boundary, it is reasonable to consider the site area associated with both the RE1 and B7 land and the potential GFA that could be harnessed. This is contemplated by clause 4.4A (3) of the Ryde LEP '*Exceptions to floor space ratio*' which stipulates the following:

(3) *Despite clause 4.4 (2), for land shown as "Macquarie Park Corridor" or "North Ryde Station Precinct" on the Centres Map, the consent authority may consent to development that results in a floor space ratio in excess of the floor space ratio shown for that land on the Floor Space Ratio Map, if:*

- (a) *the land contains land that has been dedicated to the Council for a public purpose, including roads, drainage or open space, and*
- (b) *the excess floor space does not exceed the equivalent of the site area provided for the portion of the land dedicated to the Council in relation to the land.*

The clause relates to land that has been dedicated, rather than is yet to be dedicated as is the case in this instance. The timing of the dedication is anticipated to occur once the rehabilitation and embellishment of Shrimptons Creek is completed, and therefore cannot occur prior to this Concept SSDA. Nevertheless, it is considered that the proposal satisfies the underlying objective/intent of the clause given that the land will ultimately be dedicated for a public purpose. Therefore, under this scenario, a GFA equal to the site area of the RE1 zoned land which represents 4,150m<sup>2</sup> and the B7 zone which represents 99m<sup>2</sup> is available to the Site. As such it is considered reasonable to factor into account the potential GFA of the RE1 and B7 zone within the site boundary in order to justify a variation above the maximum permitted FSR.

### 3.5 Summary of Proposed Gross Floor Area and FSR

The Concept SSDA will comprise a total GFA of 268,000m<sup>2</sup> which represents an FSR of 3.40:1 as detailed in **Tables 2 and 3**. The proposed FSR therefore exceeds the maximum FSR development standard by 0.12:1 which equates to 3.6%.

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

**Table 2 – Ivanhoe Estate Proposed GFA**

Tenure Type	Overall GFA (m <sup>2</sup> )
Social	65,476
Affordable	7,523
<b>SUB TOTAL – AFFORDABLE</b>	<b>72,999</b>
Market	172,440
Market ILUs	8,332
RACF	6,500
<b>SUB TOTAL – ALL RESIDENTIAL</b>	<b>260,271</b>
Retail	960
School	3,497
Childcare	647
MAH Office	614
Community Hub (Public)	700
Community Hub (Private)	1,311
<b>SUB TOTAL – NON RESIDENTIAL</b>	<b>7,729</b>
<b>TOTAL GFA</b>	<b>268,000</b>

Tenure Type	Overall GFA (m <sup>2</sup> )
OVERAL FSR	3.40:1

**Table 3 – Overview and Offset of GFA**

	Original Masterplan GFA (m <sup>2</sup> )	Amended Masterplan GFA RTS 1 (m <sup>2</sup> )	Proposed Masterplan GFA RTS 2 (m <sup>2</sup> )	FSR
B4 Zoned Land	228,172	228,172	228,172	2.9:1
Affordable Housing Bonus	33,045	33,045	29,898	0.38:1
<b>Total Allowable FSR/GFA</b>	<b>261,217</b>	<b>261,217</b>	<b>258,070</b>	<b>3.28:1</b>
<b>Offset GFA</b>				
Seniors Living Bonus GFA	4,892	4,892	4,892	0.5:1
On-Site Support Services	1,200	1,200	1,200	-
RE1 Zoned Land	4,150	4,150	4,150	1:1
B7 Zoned Land	99	99	99	1:1
Community Benefit GFA	11,942	13,139	6,769	-
<b>Total Potential GFA</b>	<b>22,283</b>	<b>23,480</b>	<b>17,110</b>	<b>-</b>
<b>Actual Variation FSR/GFA</b>	<b>22,283</b>	<b>16,783</b>	<b>6,783</b>	<b>0.12:1</b>
<b>Total Proposed FSR/GFA</b>	<b>283,500</b>	<b>278,000</b>	<b>268,000</b>	<b>3.40:1</b>
<b>Total Potential GFA not utilised</b>	-	<b>6,697</b> <b>(23,480 – 16,783)</b>	<b>10,327</b> <b>(17,110 – 6,783)</b>	

## 4.0 Justification for Contravention of the Development Standard

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

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

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

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

The five methods outlined in *Wehbe* include:

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

would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the FSR control pursuant to the First Method outlined in Wehbe.

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (*our emphasis*) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

**Section 4.1.1** of this document address the matters in clause 4.6(3)(a), and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control.

#### **4.1.1 The underlying objectives or purposes of the development standard**

The objectives of the development standard contained in clause 4.4 of the Ryde LEP are:

- (a) *to provide effective control over the bulk of future development,*
- (b) *to allow appropriate levels of development for specific areas,*
- (c) *in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.*

The indicative scheme, and the quantum of GFA proposed satisfies the objectives of the FSR development standard, notwithstanding the numerical non-compliance.

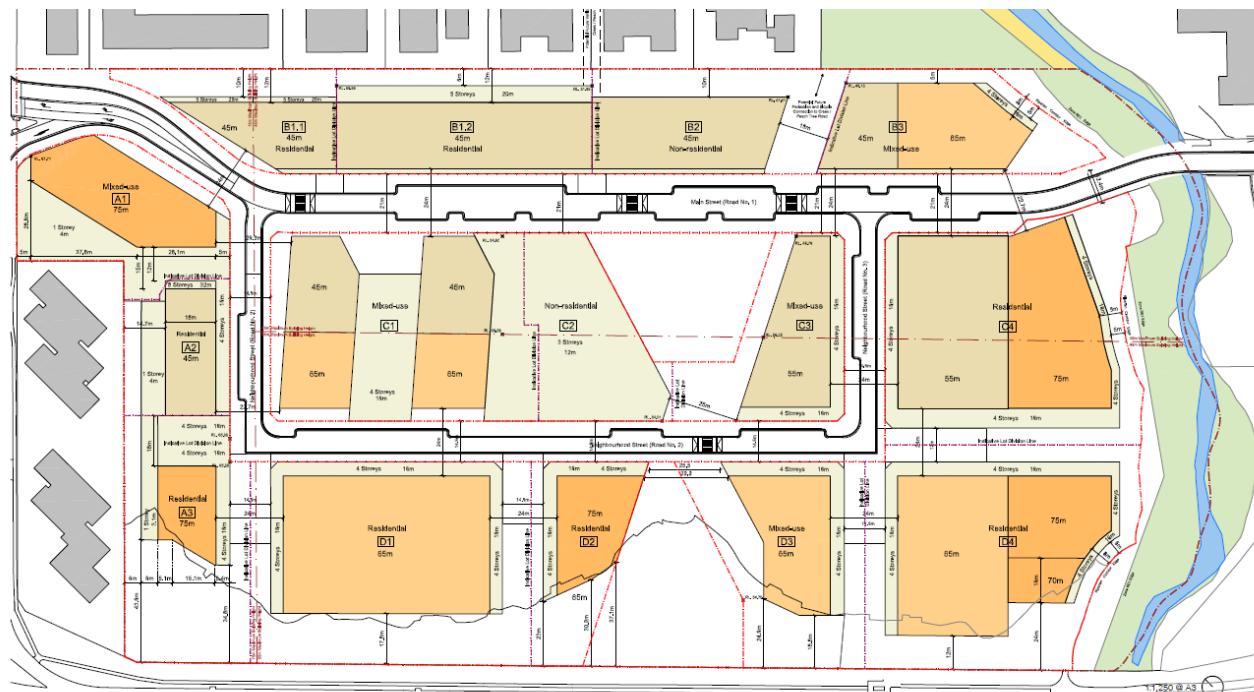
##### **Objective (a): *to provide effective control over the bulk of future development***

###### **Desired Future Built Form and Character**

The proposed building envelope for the masterplan will ensure that development of the Ivanhoe Estate will reflect the desired and future built form character of the urban context envisaged as part of the Macquarie University Station Precinct (Herring Road). Notably, the proposed FSR of 3.53:1 is less than the maximum FSRs that apply to the adjoining sites, which include 4 and 4.5:1 and therefore will not produce a built form that is out of character with the surrounding development.

The proposed building envelope for the Ivanhoe Estate will comprise of 14 development blocks as shown in **Figure 5** that have been positioned to enhance perimeter setbacks, most notably to the interface of Epping Road and Shrimptons Creek. The envelope of the development blocks will be defined by the maximum extent of the building lines and are limited to a quantum of floor space to provide flexibility for future development whilst ensuring the massing of the development is evenly distributed. At street level, buildings will be proposed at 2-4 storey scale using townhouse typologies to provide an active streetscape which also provides human scale for the pedestrian.

The Design Guidelines associated with the building envelopes will ensure that future development will respond appropriately to the periphery of the Ivanhoe Estate. The proposed building envelope and the distribution of floor space within development blocks will provide for a development of the Estate that will be compatible with the desired future built form and character of the Macquarie University Station Precinct.



**Figure 5 – Envelope Plan**

Source: Bates Smart

### Solar Access

The solar access studies undertaken by Bates Smart (see **Appendix B**) demonstrate that at least 70% of apartments receive the recommended solar access. The ADG recommends that no more than 15% of apartments should receive no direct sunlight between 9am and 3pm at midwinter. The Indicative Reference Scheme demonstrates that this Design Criteria is also satisfied. The proposed FSR variation therefore will not prevent the achievement of an appropriate level of solar access to the future dwellings.

### Overshadowing

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

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

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

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

No shadows are cast on the adjoining residential flat buildings fronting Lyonpark Road. The adjoining site at the corner of Herring Road and Epping Road is affected by shadow for a limited duration between 9am and 11am.

The overshadowing impacts created by the proposal are considered to be minor and acceptable and are not a result of the proposed FSR Variation.

### **Visual Impact Assessment**

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

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

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

The revised Visual Impact Assessment finds that the Masterplan, as proposed to be amended, has an acceptable visual impact.

### **Wind**

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

### **Ivanhoe Estate Design Guidelines**

To guide the future built form and design, the Concept SSD DA seeks to introduce a set of site specific Design Guidelines for the Ivanhoe Estate. The Concept SSD DA in conjunction with the Design Guidelines will ensure a high quality architectural and amenity outcome is achieved for the future residents and adjoining development. The Design Guidelines will establish detailed design parameters for the Estate pertaining to building setbacks, street wall heights, site coverage, deep soil, landscaping and materiality. Collectively, the Design Guidelines will assist in the effective control of the bulk and scale of future development and will guide future detailed Stage SSDAs.

### **Objective (b): to allow appropriate levels of development for specific areas,**

#### **Strategic Context of Macquarie Park**

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

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

The Greater Sydney Commission has identified Macquarie Park as Collaboration Area, where all tiers of government, stakeholders and the community will work together to ultimately produce a Place Strategy and Infrastructure Plan that responds to rapid growth and investment in the area. The Greater Sydney Commission has

released the Greater Sydney Regional Plan, which conceptualises metropolitan Sydney as three cities. Macquarie Park is part of the Eastern Harbour City, characterised by established financial, professional, health and education sectors. Urban renewal in the Eastern Harbour City is focussed on creating local identity and amenity.

Strategic planning for the area has also identified Macquarie Park as an urban renewal area, with the Herring Road Precinct, which includes the Ivanhoe site, forming part of the Department of Planning and Environment's Priority Precinct program. The Herring Road Precinct focussed on the walking catchment around Macquarie University Railway Station and along Herring Road, which were predominantly zoned B4 Mixed Use under Ryde Local Environmental Plan 2012. In 2015 the process led to amendments to Ryde LEP to increase the height and density controls, particularly around the station and major road intersection approaches to the Precinct.

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

The Concept SSDA is consistent with the desired outcomes derived from the strategic planning framework. The proposed built form and density is considered to be compatible in the context of Macquarie Park, noting the adjoining sites have higher FSRs. 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.

**Objective (c): *in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure***

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

### **Transport Orientated Development**

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

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

### **Environmentally Sustainable Development**

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

The three key sustainability commitments for the Ivanhoe Estate comprise:

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

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

#### **4.1.2 Conclusion on clause 4.6(3)(a)**

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

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*

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

Having regard to the above, in our view it would be unreasonable and unnecessary to enforce strict compliance with the maximum floor space ratio development standard contained within Clause 4.4 of the Ryde LEP.

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

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

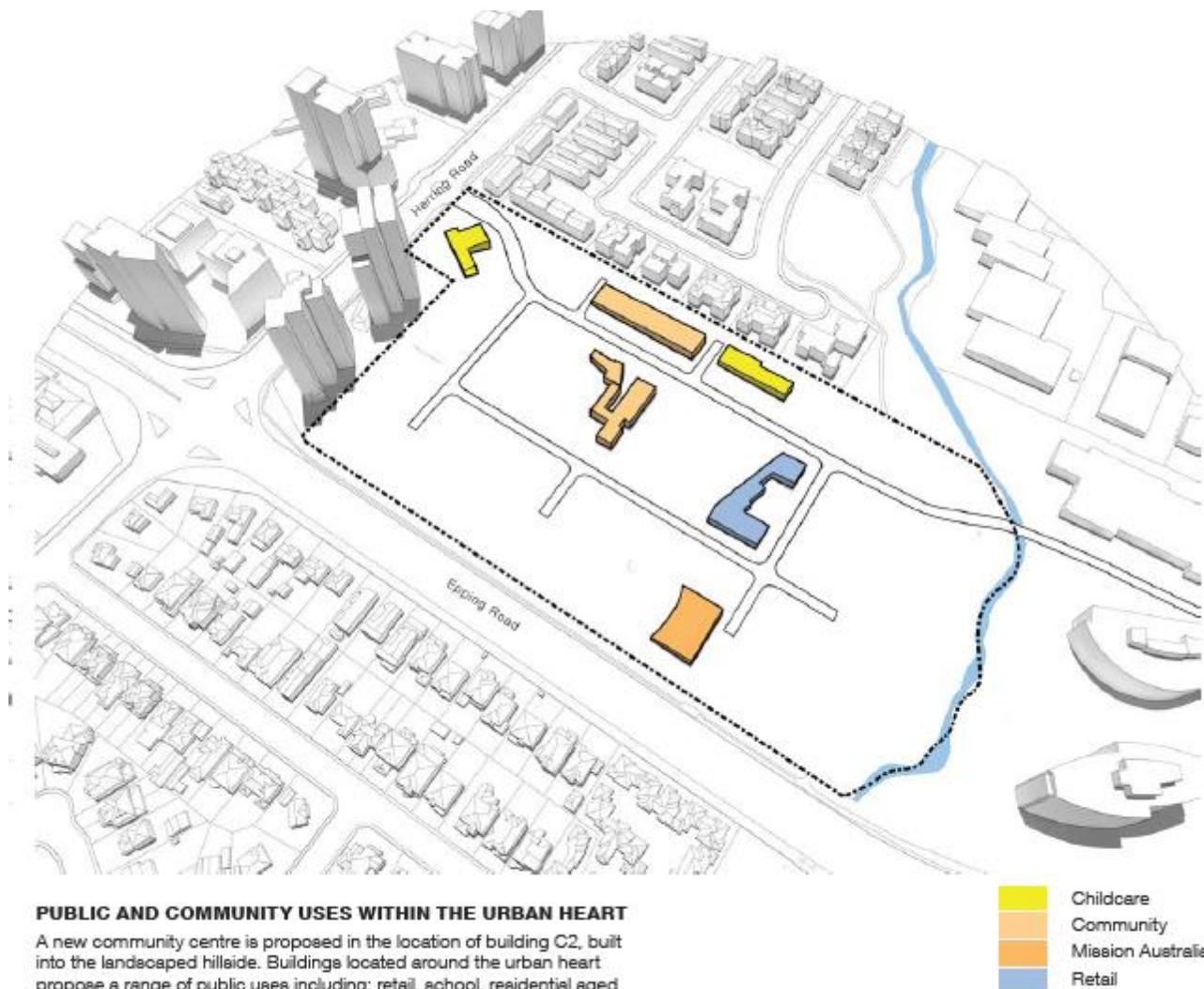
*that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

##### **4.2.1 Community Benefit GFA**

The Masterplan provides for essential non-residential uses, which will be delivered in coordination with housing, to serve the needs of Ivanhoe Estate and to benefit the existing surrounding area. These uses comprise of the Mission Australia services hub with office space for community organisations, a new public community hub, a new private community hub, an indoor recreation hall, child care centres, a Residential Aged Care Facility with a wellness centre and a school. These uses will activate the site, bring non-resident users to the site and help to address wider community needs for education, health, social support and cultural expression. **Figure 6** depicts the location of the community benefit GFA which is dispersed in strategic locations across the Ivanhoe Estate.



**Figure 6 – Community Benefit Land Uses**

Source: Bates Smart

The quantum of community benefit uses will comprise a total of 6,769m<sup>2</sup> which will enrich the site and assist with a wide range of social outcomes for the community of Ivanhoe. These uses are predominately located along Main Street and adjacent to future public domain areas to ensure that they are highly accessible within the Ivanhoe Estate and provide community activation within the Estate through large parts of the day.

Community facilities are recognised as essential support infrastructure for new communities. In both formal and informal ways, community meeting and activity spaces help to build the networks and connections, and provide the support and services, that are essential to the success and resilience of mixed communities. For a diverse and mixed community like Ivanhoe, community facilities will play a critical role in helping to build a common sense of identity and by bringing different groups in the community together.

The proposed increase in social and affordable housing onsite will result in a net increase in residents likely to want to access these community facilities. A high proportion of these future residents may be aged or have a disability, suggesting the need for a community facility to be within close proximity of the Estate. The proposed access to these community facilities within the site would improve the opportunity of residents to operate from within the site on a more permanent basis. Further, the diversity of the community benefit uses is likely to create a range of human activity and presence on the site throughout various periods of the day and night.

Should the community benefit uses not be provided, or alternatively, if they were provided in lieu of residential uses, there would be an associated reduction in the provision of social and affordable housing on the site. The delivery of the community benefit GFA is critical to the achieving the desired social outcomes for the Ivanhoe Estate.

In this regard, there is strong and justifiable merit to consider the GFA of 6,769m<sup>2</sup> associated with community benefit uses to offset a significant portion of the GFA above the maximum allowable FSR (6,783m<sup>2</sup>).

### **Delivery of Education Infrastructure**

The community benefit GFA includes 3,497m<sup>2</sup> which is to be exclusively used for the purposes of an independent vertical school located within Block B2. The school will comprise of a range of recreational facilities which can be used by the wider community outside of school hours.

The provision of the school within Ivanhoe Estate and the Macquarie University Station Precinct is consistent with strategic policy which promotes a concerted impetus to deliver new school infrastructure at both a federal and state level. The School Assets Strategic Plan sets the direction and framework for the future of school infrastructure in NSW. The Plan sets out six key sections for action and the proposed Masterplan is consistent with the relevant key actions, most specifically, that it will deliver infrastructure required to service a growing school population.

Further, the recent adoption of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP) aims to facilitate the streamlined delivery of educational establishments. The SEPP balances the need to deliver additional educational infrastructure with a focus on good design. The Ivanhoe Estate is zoned B4 Mixed Use which is identified as a prescribed zone and therefore development for a school is permissible with consent under the SEPP. It is noted that Clause 42 of the SEPP contemplates the granting of development consent for State Significant Development for the purpose of a school even though the development would contravene a development standard. Clause 42 is detailed below.

#### **42 State significant development for the purpose of schools—application of development standards in environmental planning instruments**

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

The SEPP therefore provides a mechanism, subject to this Clause 4.6 variation, to permit additional GFA associated with a school lodged as a State Significant Development. In this regard, it is considered that the proposed school will satisfy the principle aims and objectives of the SEPP.

The Community Infrastructure and Recreation Demand Study prepared by Elton Consulting (refer to **Appendix U**) demonstrates that the proposed high school will contribute to managing the increasing demand for school places in the Ryde LGA that is occurring due to the increasing residential population. At present, there are three public primary schools and one private primary school located within the vicinity of the site. The closest government high schools are Epping Boys High and Ryde Secondary College, which are within a 2 kilometre radius of the site. The analysis undertaken by Elton Consulting demonstrates that primary school enrolments at local public schools have increased over the past five years, indicating a sustained demand for school places in close proximity to the site.

The 2017 NSW State Budget committed additional funding for a new primary school at Smalls Road Ryde and a K-12 school at Meadowbank. Moreover, additional funding will be committed to local Kent Road Public School and West Ryde Public School.

The ongoing demand for school places and projected population increase indicates that there is sufficient demand for a non-government school to be provided.. The proposed school will be able to contribute to meeting this demand, as well as potentially benefit from the co-location with Macquarie University. The proposed school will also provide a range of community and recreation facilities, which will be shared with the surrounding community. This is consistent with the NSW Government policy 'Better Placed' as well as the 'NSW School Assets Strategic Plan'. In addition to these direct benefits, the presence of a school on the site will create activity on Main Street, providing a place for members of the community to interact and emphasising the value of education.

## Established Precedents for the Provision of Community Benefit GFA

The provision of community benefit GFA, in excess of the maximum allowable floor space ratio, has been recently justified and supported in two separate development consents within the Ryde LGA. These precedents are outlined in **Table 4**.

**Table 4 – Precedents relating to Community Benefit GFA**

Development Consent	Provision of Community Benefit GFA
Lachlan's Line 25-27 Epping Road, Macquarie Park SSD 5093	<p>The SSD DA endorsed a variation to the FSR standard under the Ryde LEP pursuant to a Clause 4.6 variation. The variation was predicated on the development of a community facility comprising an area of approximately 2,500 square metres in addition to floor space sought to be permitted for commercial and residential purposes across the site.</p> <p>The Department considered that the provision of the community facility appropriately responded to infrastructure needs and provided an overall community benefit, thereby supporting the variation to FSR for the community facility.</p>
6-8 Western Crescent, Ryde LDA2016/0058	<p>The Development Application relates to a mixed-use development which was determined in July 2017 by the Planning Panel. The Panel endorsed a Clause 4.6 variation of 6.6% (290sqm) to FSR based on the GFA exceedance relating to the provision of a Youth Centre within the site.</p> <p>The Panel considered that the exceedance to FSR as a result of additional GFA afforded to the Youth Centre provided for an appropriate community/public benefit.</p>

These approvals recognise the significance of supporting GFA that responds to infrastructure needs and that provide an overall community benefit. The proposed methodology therefore is consistent with precedents established by the Department and the Planning Panel. The delivery of the community benefit GFA is critical to achieving the desired social outcomes for the Ivanhoe Estate and therefore provides justifiable merit to support Community Benefit GFA above the maximum allowable FSR.

### 4.2.2 Housing Diversity

The Ivanhoe Estate Redevelopment is being undertaken as part of the Communities Plus initiative. Communities Plus is a new approach to renewing and increasing the amount of social housing stock in NSW.

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

This is achieved through redeveloping the site at higher density, with components available for the private market and components for social and affordable housing.

#### Social and Affordable Housing

The key driver of this proposal is to renew and provide additional social housing on the site whilst also contributing to the stock of affordable housing, seniors housing and market housing. NSW FACS confirms that the total number of applicants in NSW currently on the waiting list for social housing is close to 60,000 people, which excludes people waiting for a transfer. There is also a well-recognised demand for affordable housing, housing that caters to an ageing population, and housing that can meet substantial forecast population growth. The proposal will substantially increase the supply of social housing (approximately 1,000 dwellings) and provide affordable housing (approximately 128 dwellings) to help meet existing and forecast demands.

Future Directions identifies that "approximately 40% (41,000 dwellings) of social housing in NSW are located in concentrated housing estates", which can experience high levels of crime, unemployment, poor access to essential services, and tenancy management problems that can lead to further social polarisation and disadvantage. It recognises the need to de-concentrate estates and develop accessible and integrated communities, which can also

reduce the stigmatisation felt by social housing tenants. The site represents an ideal opportunity to move away from the former 'housing estate' model, and towards integrated communities with better social outcomes, which is a key driver of the Masterplan. It represents a pioneering development where social housing blends with private and affordable housing, to create a strong, integrated and resilient community with excellent access to transport, employment, improved community facilities and open space.

The proposed variations facilitate maximising the provision of social and affordable housing on the site which provides a public benefit of State significance.

### **Seniors Housing**

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

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

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

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

For this reason, there is strong merit in this instance to consider the potential availability of bonus GFA consistent with the Seniors SEPP given the need to cater for an ageing population. Further, as discussed in Section 3.4.2, the development would have otherwise been eligible for the bonus GFA had the SEPP been drafted contemplating the potential that seniors living would be provided as part of an integrated mixed use Masterplan rather than only as a standalone development.

In light of the demonstrated demand for seniors housing, and the framework that is provided in a State policy to incentivise providing seniors GFA, it is considered there is sufficient environmental planning grounds to support a variation above the maximum allowable FSR for the purposes of seniors housing in accordance with the SEPP.

#### **4.2.3 Public Domain and Landscaping**

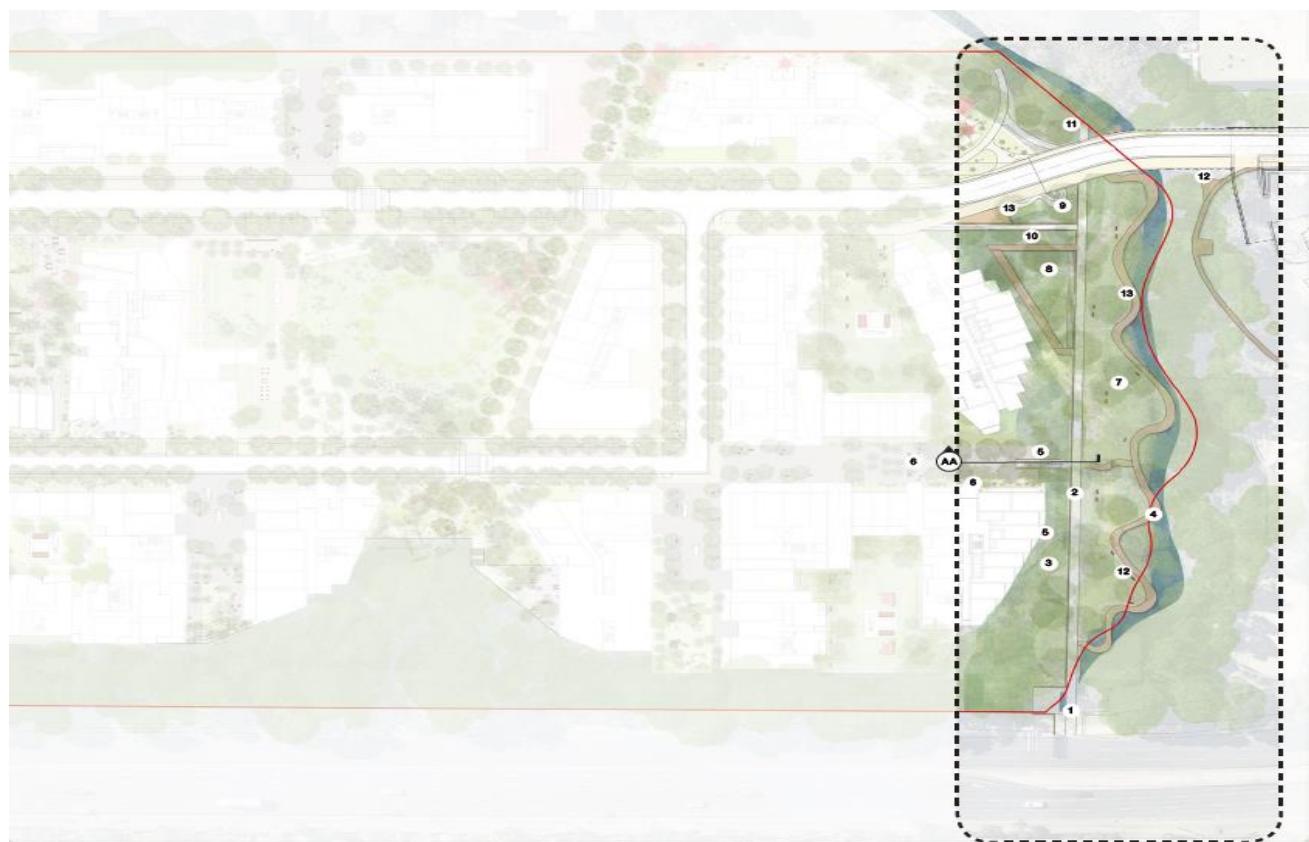
The following section demonstrates that despite the proposed variations to FSR development standard, the proposed Masterplan will achieve a high quality public domain and landscape outcome.

##### **Rehabilitation of Shrimptons Creek Riparian Corridor**

An enhanced riparian buffer has been incorporated into the refined Masterplan. The exhibited design proposed a 20 metre riparian corridor adjoining Shrimptons Creek in accordance with the NSW Office of Water *Guidelines for riparian corridors on waterfront land* and this buffer has been expanded through the incorporation of increased setbacks from the edge of the riparian corridor and additional 'forest threshold' green spaces along the creek. The buildings adjoining the creek are set back at least 5 metres, in accordance with the RDCP, and this setback area has been increased through refinement and reorientation of the building envelopes. The proposed riparian corridor and buffer area comprises a total of 2,470m<sup>2</sup>, which is larger than the buffer that would be provided if the 10 metre setback recommended by Council was adopted. The proposed riparian buffer is illustrated at **Figure 7**.

In the case of the proposed development of Ivanhoe Estate, the proponent intends to invest significant capital by embellishing the RE1 and B7 zoned portion of the site for use by existing residents in the vicinity, as well as by future residents of the site. Further these works will result in the embellishment and rehabilitation of the creek corridor within and adjoining the site. As such it is considered reasonable to factor into account the potential GFA of 4,150m<sup>2</sup> drawn from the RE1 zone and 99m<sup>2</sup> drawn from the B7 zone within the site boundary, as would have otherwise been provided for under clause 4.4A of the LEP had the area already been dedicated.

To reinforce the above, this approach had been adopted by the former Sydney East Joint Regional Planning Panel under a similar clause within the preceding Ryde LEP for 8 Khartoum Road, Macquarie Park (Ref. LDA2013/0106). This consent permitted the application of site area associated with the construction of roads within the site to be used for the purposes of GFA calculation resulting in a Clause 4.6 variation to FSR. The justification and intent was to incentivise land owners to provide for and dedicate roads and public open space in Macquarie Park. In the circumstance of this approval, the area of the road was provided with an FSR of 1:1, in addition to the overall site area which was subject to a maximum FSR of 1:1. Under the relevant clause in the Ryde LEP at the time, the site was therefore eligible to an FSR 1.3:1 when factoring into account the area of the road within the site. The methodology sought with this application is comparable to this precedent, albeit the RE1 zone is not subject to an FSR standard. Despite this, it would not be unreasonable to factor into account the site area equivalent to the RE1 zone to provide additional GFA pursuant to Clause 4.4A, as incentive for the land to be embellished and dedicated as public open space.



**Figure 7 – Shrimptons Creek Indicative Plan**

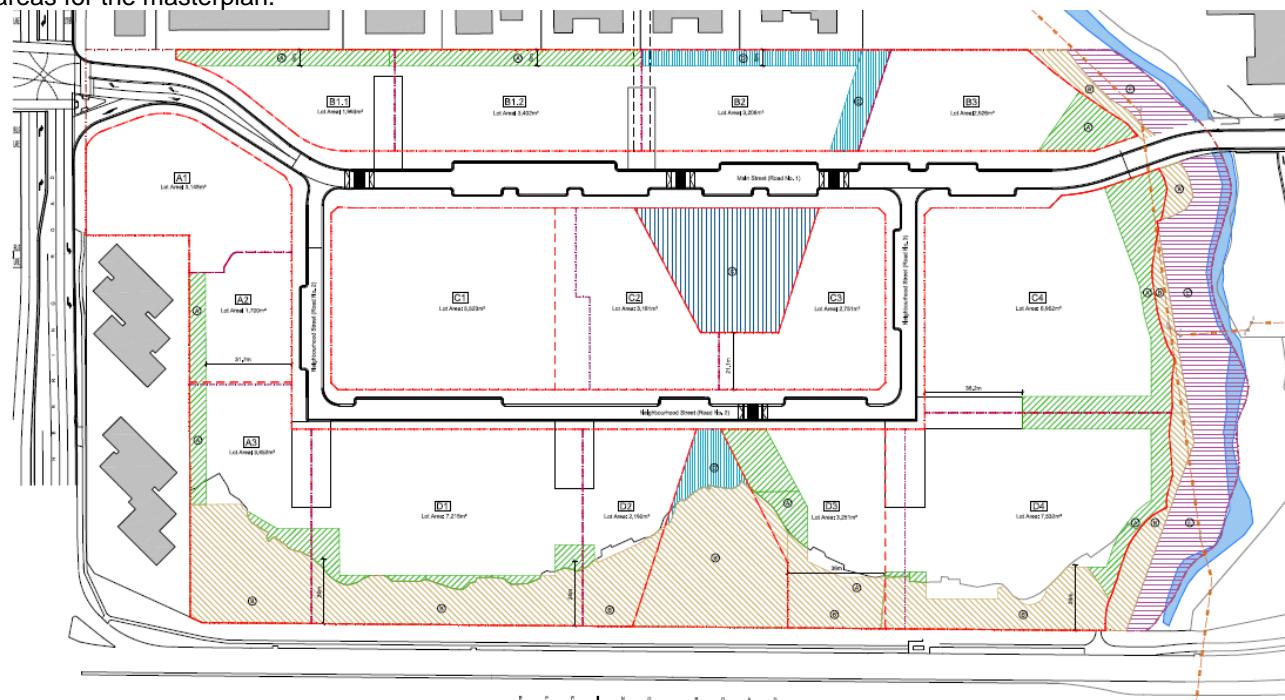
Source: Bates Smart

### Deep Soil Landscaping

The proposed masterplan exceeds the deep soil area requirements applicable to the site under SEPP 65 and the Apartment Design Guide. The SEPP stipulates a minimum deep soil area of 7% of the site area whilst the proposed masterplan provides a deep soil area of 17.6% of the site.

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

The canopy trees are proposed to extend the length of the southern perimeter boundary in order to provide a strong landscape buffer. The exceedance of the deep soil area combined with the proposed landscape scheme assists in softening the built form from the public domain and adjoining properties. **Figure 8** depicts the proposed deep soil areas for the masterplan.



**Figure 8 – Deep Soil Landscaping**

Source: Bates Smart

## Enhanced Public Domain and Open Space

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

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

The approach to the public domain has informed the urban structure which draws on the site's existing landscape features with a diagonal sequence of high quality public open spaces connecting the turpentine forest along Epping Road with the public open space on Shrimptons Creek. The public domain approach sets up a framework of development blocks across four precincts as discussed in **Section 4.4.6**. Overall, the proposed masterplan will

provide 25% of high quality and accessible public and communal open space areas within the site as depicted in **Figure 9**.



**Figure 9 – Open Space and Public Domain**

Source: Bates Smart

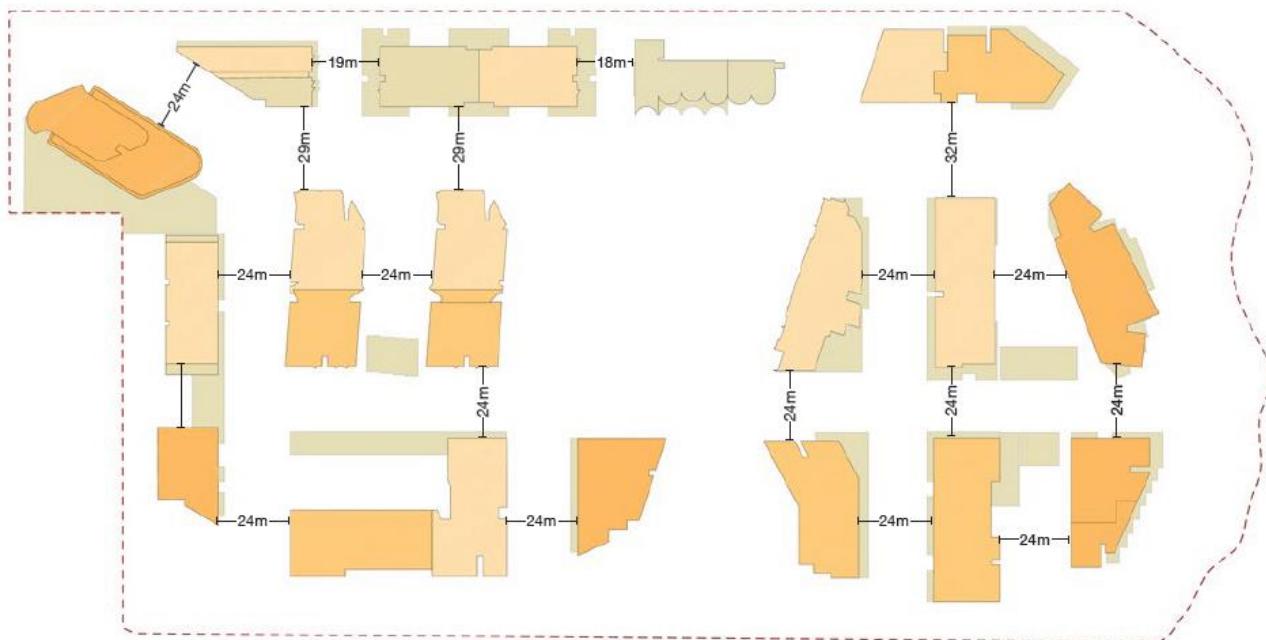
#### 4.2.4 Building Form and Massing

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

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

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

Additionally, the form and massing of buildings have been enhanced through provision of generous building separation accordance with SEPP 65 and the Apartment Design Guide. Each internal building interface will generally comply with the minimum building separation requirement of the ADG as depicted in **Figure 10**.



**Figure 10 – Building Separation**

Source: Bates Smart

#### 4.2.5 Minimal Environmental Impact

Notwithstanding the proposed variation to FSR, the environmental impacts of the proposed building envelope can be appropriately managed or mitigated and do not result in a massing that would represent an over development of the Site. The Design Report in conjunction with the Indicative Architectural Drawings, demonstrate that the GFA proposed in the Masterplan is appropriate for the site, specifically because:

- a high quality public domain with a variety of appropriately sized public and private open spaces can be achieved across the site, including providing in excess of 22% as deep soil area;
- the future buildings are capable of complying with the Apartment Design Guide, notably compliant solar access, cross ventilation and building separation;
- the shadow analysis demonstrates that the indicative scheme does not have any unacceptable adverse shadow impacts on the surrounding residential areas;
- the setbacks established for the site ensure the scale of buildings as perceived from the public domain is reduced;
- the Visual Impact Assessment concludes that the visual impacts are acceptable;
- the proposed masterplan is capable of achieving a suitable wind environment for pedestrians and of meeting the relevant safety criterion.
- traffic generation will not cause undue pressure on existing roads subject to a range of mitigation measures.
- the proposal will preserve and enhance the ecological corridor along Epping Road and Shrimptons Creek with any impacts to be appropriately offset.
- the development will be supported by existing and planned infrastructure which will have sufficient capacity to accommodate the proposed masterplan.

#### 4.2.6 Conclusion on clause 4.6(3)(b)

The consent authority can be reasonably satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that there are sufficient environmental planning grounds to justify contravening the development

standard in this instance as the non-compliance with the FSR control facilities a development that will provide a uniquely diverse range of housing types and supporting ancillary uses to strengthen the local community. These specific uses are critical to the future of the Ivanhoe Estate to ensure a high level of social outcomes for the community.

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

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

The proposed development is consistent with the objectives of the maximum floor space ratio development standard, for the reasons discussed in this report.

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

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

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

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

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

##### **4.3.3 Overall public interest**

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

#### **4.4 Other Matters for Consideration**

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

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

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

These matters are addressed in detail below.

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

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

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

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

There is no public benefit in maintaining the numerical FSR development standard in this instance. Maintaining and enforcing the development standard in this case would unreasonably constrain the orderly and economic development of this strategically significant site, and unnecessarily reduce the various community benefits that this development would deliver.

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

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

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

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

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

## 5.0 Conclusion

The assessment above demonstrates that compliance with the maximum floor space ratio development standard contained in clause 4.4 of the Ryde LEP is unreasonable and unnecessary in the circumstances of the case. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the proposed developments non-compliance with the maximum floor space ratio development standard:

- the proposed flexible application of controls achieves better planning outcomes than would be achievable by strict adherence to the controls across the development site;
- the proposal is in the public interest and is consistent with the applicable land use zones and development standards;
- the additional floor space can readily be accommodated within the proposed envelope, which the EIS has found is compatible with the scale and character of the area. Nor will it result in additional adverse amenity or environmental impacts;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance;
- there is no public benefit in maintaining the FSR development standard adopted by the environmental planning instrument for this site; and
- legal precedent has been addressed as part of this clause 4.6 variation request, and concludes the unique circumstances of this Site and the development proposal are such that they and this justification cannot be replicated.

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

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