



## **Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

### **Proposed Sikh Grammar School (Masterplan and Built Form Approval)**

151-161 Tallawong Road, Rouse Hill  
(Lots 42 & 43 DP 30186)

Prepared by Willowtree Planning on  
behalf of Sikh Grammar School Australia  
C/- PMDL Architecture & Design Pty Ltd

August 2019

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### **PART A PRELIMINARY**

#### **1.1 INTRODUCTION**

This Clause 4.6 Variation request has been prepared in support of the State Significant Development Application (SSDA) for the Masterplan and built-form approval of the Sikh Grammar School. The Proposed Development would be located at 151-161 Tallawong Road, Rouse Hill (Lots 42 & 43 DP 30186), for which it would be located on a site area of approximately 3.13 hectares (ha).

The Proposed Development results in a non-compliance with Clause 4.3 Height of Buildings under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Sydney Region Growth Centres SEPP) – Appendix 12 Blacktown Growth Centres Precinct Plan.

This Clause 4.6 Variation request has therefore been prepared in accordance with the requirements of Clause 4.6 of the Sydney Region Growth Centres SEPP, which has the following aims and objectives:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

In accordance with Clause 4.6(3) of the Sydney Region Growth Centres SEPP, the NSW Department of Planning, Industry and Environment (DPIE) is required to consider the following:

*"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."*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standard.

#### **1.2 PROPOSED NON-COMPLIANCES**

##### **1.2.1 Clause 4.3 Height of Buildings**

Under the provisions of Clause 4.3 of the Sydney Region Growth Centres SEPP, the Site is subject to a maximum building height of approximately 9 m. It is noted, that the Proposed Development would comprise an Educational Establishment (including varied building components), which would attain a maximum height of approximately 18.19 m (with respect to the highest point of the proposed Gurdwara & Langar), measured from the vertical distance of the ground level (existing) to the highest point of the proposed building, in accordance with definition bestowed under the Standard Instrument. The Proposed Development would result in an exceedance of the Sydney Region Growth Centres SEPP 9 m height control by approximately 9.19 m (or by 102%).

#### **1.3 STRATEGIC PLANNING JUSTIFICATION**

If the Proposal was to include a compliant scheme in accordance with the Development Standards of the Sydney Region Growth Centres SEPP, the built-form potential of the Site would be significantly under-realised. Hypothetically, if a height compliant scheme for the Proposal was submitted, it would:

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- Not contribute towards meeting the demand for new infrastructure (schools) within the North West Priority Growth Area, within the Blacktown Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Central City District Plan*, by potentially resulting in a reduction in available building footprint across the Site and consequently future permissible land uses on the Site;
- Threaten the commercial viability of the Proposed Development by reducing the overall achievable maximum height across the Site, by which would impact on end-user operational requirements for the Sikh Grammar School;
- Create fewer full-time equivalent employment opportunities during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred heights across the Site not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential in an area earmarked for such exponential growth and demand.

Notwithstanding, this Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant Development Standards under the Sydney Region Growth Centres SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes, that the proposed non-compliance is the best means of achieving the objective, which encourages orderly and economic use and development of land under Section 1.3 of the EP&A Act.

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### **PART B THRESHOLDS THAT MUST BE MET**

#### **2.1 CLAUSE 4.6 OF THE SYDNEY REGION GROWTH CENTRES SEPP**

In accordance with Clause 4.6 of the Sydney Region Growth Centres SEPP, the NSW DPIE is required to consider the following Subclauses:

*(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.*

*(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 Director-General has been obtained.*

*(5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

The matters are responded to in **Part D** of this Clause 4.6 Variation.

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### PART C THE STANDARD BEING OBJECTED TO

#### 3.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF STATE ENVIRONMENTAL PLANNING POLICY (SYDNEY REGION GROWTH CENTRES) 2006

The Development Standard requested to be varied is Clause 4.3 Height of Buildings of the Sydney Region Growth Centres SEPP. **Table 1** below outlines the proposed variation sought to Clause 4.3 of the Sydney Region Growth Centres SEPP.

Table 1: Proposed Development Standard Variation in Relation to the Sydney Region Growth Centres SEPP			
Sydney Region Growth Centres SEPP Clause	Sydney Region Growth Centres SEPP Development Standard	Proposed Development Non-Compliance	Percentage of Variation
Clause 4.3(2) Height of Buildings	Maximum 9 m building height	The proposal seeks development consent for a 18.19 m maximum building height	102 %

#### 3.2 HYPOTHETICAL COMPLIANT DESIGN

As mentioned above in **Section 1.3**, an alternative, hypothetical design compliant with Clause 4.3 would:

- Not contribute towards meeting the demand for new infrastructure (schools) within the North West Priority Growth Area, within the Blacktown Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Central City District Plan*, by potentially resulting in a reduction in available building footprint across the Site and consequently future permissible land uses on the Site;
- Threaten the commercial viability of the Proposed Development by reducing the overall achievable maximum height across the Site, by which would impact on end-user operational requirements for the Sikh Grammar School;
- Create fewer full-time equivalent employment opportunities during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred heights across the Site not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential in an area earmarked for such exponential growth and demand.

Overall, an alternative, hypothetical design compliant with Clause 4.3 is not considered justified for the Site.

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### **PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS**

#### **4.1 OBJECTIVES OF THE STANDARD**

A key determinant of the appropriateness of a Clause 4.6 Variation to a Development Standard is the Proposed Development's compliance with the underlying objectives and purpose of the Development Standard.

Therefore, while the Site is subject to a specified numerical control for building height (Clause 4.3(2)), the objectives and underlying purpose behind these Development Standards are basic issues for consideration in the development assessment process, for which require due consideration (refer to **Figure 1** below).

##### **4.1.1 Sydney Region Growth Centres SEPP – Clause 4.3 Height of Buildings**

Clause 4.3 of the Sydney Region Growth Centres SEPP sets out specific objectives. Those objectives under the Sydney Region Growth Centres SEPP are responded to as follows:

*(a) to establish the maximum height of buildings,*

As described in this Clause 4.6 Variation request, the Proposed Development exceeds the 9 m maximum building height established by the Sydney Region Growth Centres SEPP. However, it is important to note, that the Proposed Development for the purposes of an Educational Establishment, would remain generally consistent with regard to the building height achieved in the developments for the purpose of a new school (or an extension to an existing school).

Furthermore, the built-form of the Site would be further complemented by means of contrast to Educational Establishments in close proximity of similar size and nature, including Rouse Hill Anglican College and The Ponds High School. In this regard, the architectural design of the built-form has responded to the topography of the Site, as well as ensuring optimum solar access can be achieved for the Proposed Development, and that the solar access of adjoining developments is not compromised in any such way.

The proposed heights would be further mitigated by implementing an aesthetically pleasing architectural landscape design, that provides a vibrant and welcoming site, through a varied and diversified array of carefully chosen native and endemic flora species that respond to the historic nature, cultural values and local topography of the Site.

Additionally, the built-form of the Proposed Development responds to the operational requirements of the end-user (Sikh Grammar School Australia) of the Subject Site. Accordingly, the height of the Proposed Development is considered highly appropriate for the Site and its local and regional context.

*(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*

the built-form of the Proposed Development responds to the operational requirements of the end-user (The Sikh Grammar Australia). Accordingly, the height of the Proposed Development is considered highly appropriate for the Site and its local and regional context. Notwithstanding, the height is representative of market needs and demands for Educational Establishments, to be able to cater for intended student and staff populations, whilst being able to deliver on open space requirements across the Site.

The intent of the Proposed Development is to contribute to the existing and future character experienced and intended within the R2 Low Density Residential zone within the immediate vicinity of the Subject Site in a complementary manner, consistent with the Sydney Region Growth Centres SEPP and the

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*Blacktown City Council Growth Centres Precincts Development Control Plan 2018* (BCC Growth Centres DCP).

The design approach for the Site has evolved in a considerate relationship to adjoining properties on the Tallawong Road and future access road(s) street frontages, to ensure their current and future amenity would not be compromised. It is important to note, that the predominant building setbacks would be maintained accordingly, with regard to the setback controls (both building and landscaping) articulated within the BCC Growth Centres DCP for residential development. It is noted, that a sympathetic position has been imposed with regard to the underlying residential setback controls for the Site (as there are no such set development controls for Educational Establishments). Particular focus has been maintained, that the height breach and non-compliance is only evident within certain portions of the development profile and footprint and not across the whole of the Site.

With regard to the Proposal's overall site configuration; a well-resolved built-form; and potential public realm benefits, the Proposed Development can create a high quality built-form, which is complementary and conducive to the street character on the Tallawong Road and future access road(s) street frontages. The Proposal will also demonstrate a quality contribution to the urban built-form of the surrounding area and wider North West Priority Growth Area, comprising a versatile mix of similar, transitional developments, with respect to residential development adjoining a school site.

Accordingly, through generous landscaping and peripheral amenities to help activate the Site and surrounds, the Proposed Development can achieve a suitable fit within the existing and future public realm character and locality, intended and earmarked for the area. The Proposal would express and exhibit positive economic, social and environmental benefits for the wider community, whilst not impacting on existing and future residential receivers adjoining the Site.

In order to facilitate high quality resolution of the building envelope, and to enable the best outcome for a transitional relationship with the adjoining properties, the Proposed Development comprises a legible and efficient floor plan, with respect to the varied building components proposed, as well as incorporating façade articulation to maximise the Site's visual appearance in the form of a conducive, State-of-the-Art, 'First-of-its-kind', Educational Establishment. Additionally, material and colour selections complement an aesthetic, that is not considered to be visually adverse or obtrusive, but rather integrates and transitions with adjoining properties and the colour palette of native and exotic flora species located within the wider locality.

Underpinned by the subtly expressive architectural language, the building articulation of the Educational Establishment (and associated building components), transition well both horizontally and vertically, with regard to the Site's topography, streetscape and built-form relationships with existing and future planned residential and other permissible development surrounding the Subject Site.

Furthermore, the proposed height would respond to and be further complemented by the height of Educational Establishments (as mentioned above) in close proximity of the Subject Site; also positioned within the R2 Low Density Residential zone, respectively. The Proposed Development similarly provides a suitable amenity impact, with regard to the protection of the views, privacy and solar access of neighbouring properties. It is noted, that the additional building height is located away from the boundaries of any surrounding residential properties and is further buffered and screened by an increase in landscaping proposed across the Subject Site. As a result of the non-compliance, the Proposed Development would not obstruct any views, will not give rise to overlooking and will not cause overshadowing (refer to **Appendix ...**).

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*(c) to facilitate higher density development in and around commercial centres and major transport routes.*

It is noted, that the Proposed Development is located approximately 1.2 km north of Tallawong Station, which forms part of the Sydney Metro Northwest Rail Link. The Proposed Development, for the purposes of an Educational Establishment would respond to the Subject Site's constraints, i.e. size, by utilising an increased height in proposed buildings that contradict the permitted maximum Development Standard under Clause 4.3 of the Sydney Region Growth Centres SEPP.

Notwithstanding, the Proposed Development responds to Subclause 4.3(1)(c), by facilitating a higher density development, that is considered in close proximity to major transport infrastructure routes, such as bus and rail networks, as well as the wider regional road network, ultimately providing enhanced connectivity to the Subject Site. As a result of increased density concerning the Proposed Development, combined with access to a range of major transport infrastructure routes, the Proposed Development enhances its accessibility and capacity for not only the immediate community, but the wider locality too.

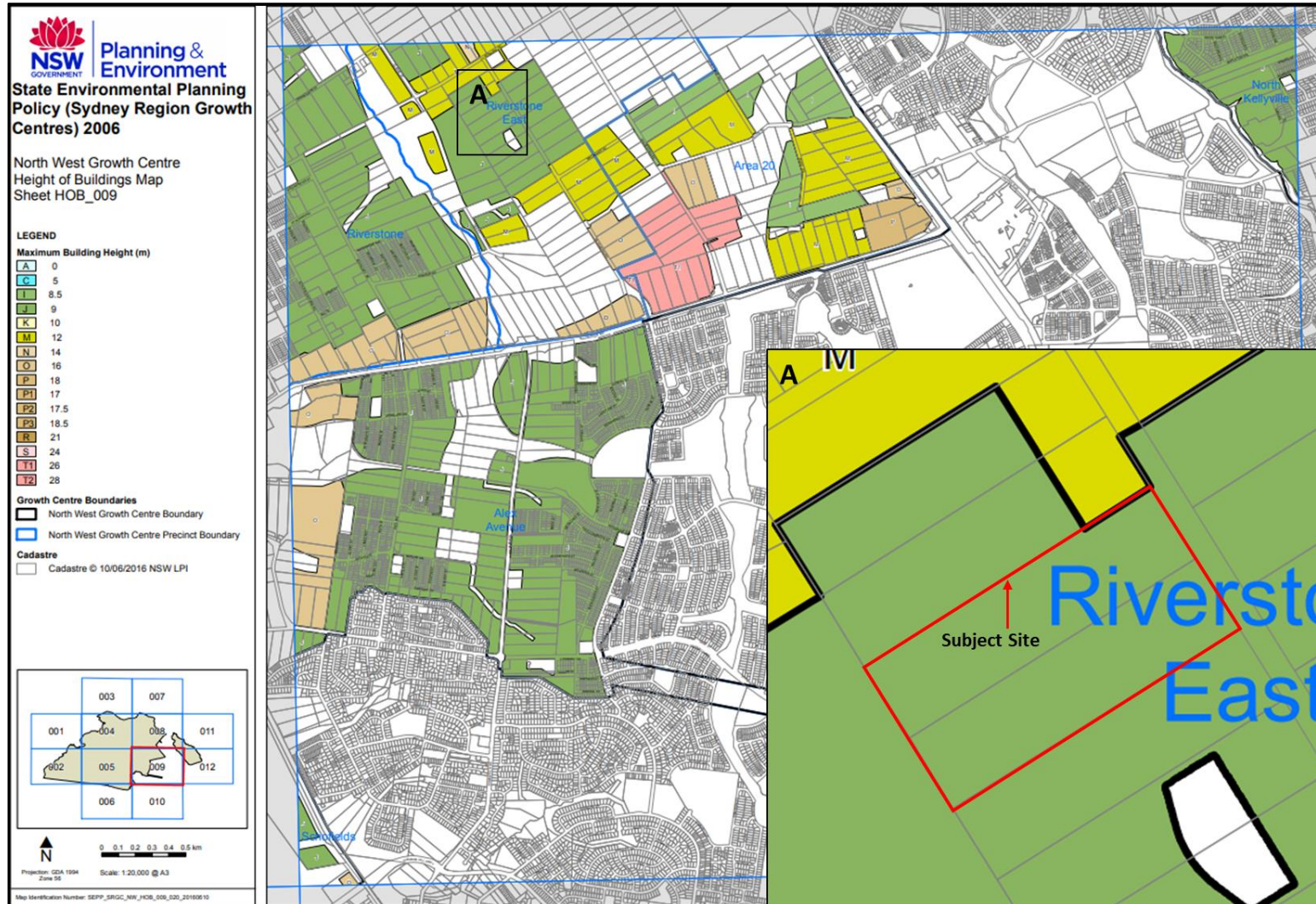
Whilst the density of the Proposed Development would be notably greater than the adjoining residential developments surrounding the Subject Site, the proposed earthworks and architectural treatment and informed design would offer a functional and aesthetically-pleasing built-form outcome. Furthermore, the additional building height (attributing to an increase in density across the Site) is required in order to maintain level access to all of the School facilities and to create uniform rooflines, building lines and floor levels. In turn, this would contribute to a uniform streetscape. It is noted, that an alternative design with a completely compliant height would result in disconnected building elements, a disjointed streetscape and dysfunctional internal level changes. Therefore, the proposed heights and increase in density across the Site are considered warranted.



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**Figure 1 Maximum Building Height of the Subject Site and Surrounding Area (Source: NSW Legislation, 2019)**

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### **4.2 OBJECTIVES OF THE ZONE**

The Subject Site is zoned R2 Low Density Residential under the provisions of the Sydney Region Growth Centres SEPP, where Educational Establishments, as well as Centre-based Child Care Facilities and Places of Public Worship are considered permissible with development consent.

The Proposed Development is considered consistent with the R2 Low Density Residential zone objectives, in that:

- *To provide for the housing needs of the community within a low density residential environment.*

In accordance with the zone objective, the proposed school (Sikh Grammar School) provides a compatible land use. This is suggested by the inclusion of schools as a permissible use in the R2 Low Density Residential zone pursuant to the Sydney Region Growth Centres SEPP, the inclusion of the R2 zone as a Prescribed Zone pursuant to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP), and the technical studies supporting the EIS. Notably, the proposed school has been demonstrated to provide a suitable use of the Site with respect to traffic, noise and neighbouring amenity.

The proposed school responds to the increased community demand in the North West Priority Growth Area for infrastructure services such as Educational Establishments within the R2 zone. Furthermore, the proposed Sikh Grammar School would be positioned on a site, that is considered in close proximity to an array of Sikh community members. Therefore, the compatibility of the proposed land use and suitability of the Site for the Proposed Development is further considered in the overarching EIS and corresponding appendices, accompanying this Clause 4.6 Variation.

Additionally, the Proposed Development is considered to be consistent with the strategic direction of *A Metropolis of Three Cities* and the *Central City District Plan*.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As mentioned above, the Proposed Development is compatible with surrounding land uses, including existing rural-residential properties and low-density residential dwellings currently being constructed along Tallawong Road. This is suggested by the inclusion of Educational Establishments as a permissible use in the R2 Low Density Residential zone, pursuant to the Sydney Region Growth Centres SEPP; the inclusion of the R2 zone as a Prescribed Zone pursuant to the Education SEPP; and the technical studies undertaken, that support the overarching EIS. Notably, the proposed Sikh Grammar School has been demonstrated to provide a facility and infrastructure, that services the day to day needs of residents and the wider community, that is supportable on grounds concerning potential impacts to traffic, noise and neighbouring amenity.

Furthermore, as mentioned above, the proposed school responds to the increased community demand in the North West Growth Centre for infrastructure services such as Educational Establishments, permissible within the R2 zone. Attributing to the positioning of the Subject Site, is the enhanced accessibility via a range of transport infrastructure routes, including the bus network (proposed links along Tallawong Road), the rail network (Tallawong Station approximately 1.2 km south of the Site) and the wider regional road network.

- *To allow residents to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.*

Of particular importance, given the purpose and context of this Clause 4.6 Variation, to justify a non-compliance with a development standard, the proposed additional building height would not create

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conflict between the Subject Site and any surrounding land uses. The non-compliant sections of the building will not protrude above the remainder of the School features and therefore, will not be visually prominent; will not obstruct any views; will not give rise to overlooking; and, will not cause overshadowing (as demonstrated in the Architectural Plans in **Appendix 8** of this Submission). Neighbouring amenity will thereby be protected as a result of the non-compliance experienced.

- *To support the well-being of the community, by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low density residential environment.*

The Proposed Development has been sympathetically designed to integrate with the current rural-residential character of the surrounding context, whilst also responding to the future urban growth that is anticipated for this area of North Western Sydney, within the North West Priority Growth Area.

The positioning of the Proposed Development has not only been influenced by the informed urban development growth rates; however, shares linkages to the cultural merits of the area, with a heavily influenced Sikh culture being noted to occupy and own quite a large number of residential land holdings in the immediate vicinity, as well as the wider locality.

It is noted, that the Proposed Development comprises a built-form, which is larger than the dominant residential typologies (existing and future proposed) experienced within the immediate proximity of the Subject Site and surrounding area. Notwithstanding, the design approach for the Proposed Development considers the Site and its contextual relationships with the adjoining and surrounding land uses.

Adherence to the objective of enhancing the identity of the established residential environment by enabling other permissible land uses would be achieved through the inclusion of the Proposed Development (including an Educational Establishment, Early Learning Centre and Place of Public Worship) incorporating articulation of building envelopes, which have been strategically designed to create well-modelled architectural forms, with a rhythm that reflects the scale of nearby houses and landscaped open spaces between, with scope included for setbacks and a high quality architectural design, that can mitigate against any concerns about appropriate streetscape character and / or neighbouring amenity.

Furthermore, with particular focus on the preserving the well-being of the community, the residential amenity with respect to the immediate neighbouring properties would be satisfactorily addressed through integrating appropriate floor layouts into the overall design, that would minimise any direct overlooking, as well as provide extensive landscaping, that would further screen any possible visual intrusions. While it is not anticipated, that any significant noise generation issues would occur as a result of the Proposed Development (as confirmed by Resonate – refer to **Appendix 20**), there are also provisions to include perimeter acoustic screening, if required by relevant sensitive boundaries and environments. Additionally, provisions for deep-soil landscape planting would reinforce the private nature of residential areas within the adjoining properties.

Therefore, the Proposed Development responds to the economic, social and cultural demand of an underperforming and undeveloped Site, which has been zoned accordingly for such a permissible land use(s), including key components proposed on the Subject Site, such as Centre-based Child Care Facilities (Early Learning Centre); Educational Establishments (Sikh Grammar School); and, Places of Public Worship (Gurdwara and Langar) – which, would positively complement the exponential growth patterns experienced in the immediate vicinity of the Subject Site, as well as the wider locality.

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### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

When considering whether a Development Standard is appropriate and / or necessary, one must take into account the nature of the proposed variation; the Site context; and the design of the Proposed Development.

Compliance with the standard would be unreasonable and unnecessary, given that the Proposed Development generally maintains the height permitted under Clause 4.3 of the Sydney Region Growth Centres SEPP with regard to the Subject Site. The non-compliance primarily arises due to the exceedance in height proposed, that exceeds the standard imposed under the Sydney Region Growth Centres SEPP. The additional building height proposed, would not be visually prominent and would not result in any amenity impacts for neighbouring properties. Furthermore, as shown in **Section 4.1** above, the Proposed Development is considered consistent with the objectives of Clause 4.3 pursuant to the Sydney Region Growth Centres SEPP.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The Proposed Development, for the purposes of an Educational Establishment, would generally maintain the maximum building height permitted under the Sydney Region Growth Centres SEPP with regard to the Subject Site (exceedance by [X] m). The visual appearance of the Proposed Development's bulk and scale would thereby be generally consistent across the Subject Site, within the boundaries of the School site. The Proposed Development would integrate suitable setbacks for each building component, so as to not compromise the amenity and views of adjoining land uses. Additionally, the Proposed Development would effectively integrate the streetscape and character of the area into the proposed scheme to result in a conducive architectural design.
- The additional building height responds to the sloping topography of the Subject Site, which would be dealt with during the construction of the School site through cut and fill across the Site, as well as through the architectural treatment of the School components, creating consistent and functional levels across the board.
- A positive visual outcome, accounting for views from the streetscape, surrounding sites and the internal areas of the School, would be resultant of the Proposed Development. Accordingly, additional building height is required across the Site to create continuous floor levels, promote connectivity for the various elements of the School and to provide level access. In turn, this would contribute to a uniform streetscape. It is important to note, that an alternative design with a completely compliant building height would result in disconnected building elements, a disjointed streetscape and dysfunctional internal level changes.
- Where non-compliant features are experienced across the Site, these features will not be visually prominent, will not obstruct any views, will not give rise to overlooking and will not cause overshadowing. Furthermore, the non-compliant features would be further mitigated through resultant landscaping across the Site. The Proposed Development, would therefore protect neighbouring amenity from being compromised.
- The Proposed Development is considered compatible with surrounding land uses, including rural-residential land uses along Tallawong Road. This is suggested by the inclusion of Educational Establishments as a permissible use in the R2 Low Density Residential zone pursuant to the Sydney Region Growth Centres SEPP, the inclusion of the R2 zone as a Prescribed Zone pursuant to the Education SEPP, and the technical studies supporting the EIS. Notably, the Proposed Development has been demonstrated to provide a suitable use of the Site with respect to traffic, noise and neighbouring amenity.

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- The Proposed Development has been sympathetically designed to integrate with the current rural-residential character of the surrounding context, whilst also responding to the future suburban character earmarked for the area – North West Priority Growth Area.
- The architectural treatment of the Site, with an increase in density, particularly through the height of buildings has allowed for an increase in the amount of open space to be retained on-site. This is considered integral, with regard to enabling the Site to integrate with the current rural-residential character of the immediate surrounds. Thereby, the additional height proposed, is an important contributing factor in promoting the integration of the development in its environment.
- The concentration of the built-form proposed, also responds to the environmental constraints experienced across the Site, particularly with regard to flooding. The design and siting of the architectural components offers a functional response to the creation of a safe, amenable and innovative learning environment, that simultaneously allows for natural process and the integrity of the environment to be maintained. Furthermore, the proposed additional building height is required to allow for this concentration of development outside of the identified flood zones and is thereby essential to minimise risks to future staff and students.

Notwithstanding, reducing the height of the design to strictly meet the Sydney Region Growth Centres SEPP Development Standard is considered unreasonable, as this would result in a less efficient use of the Site and require a more substantial building footprint; thereby, reducing the potential staff and student population able to be achieved across the Site and further reducing the amount of open space achieved across the Site. In turn, this would create an operationally unsound for the future end-users (The Sikh Grammar School Australia). Further, a reduced height may result in a building design that does not respond as well to the Site's prevailing topography, which the proposed heights have been so strategically based on, as well as the strategically incorporated engineered design, which includes suitable levels for the Site, through balanced cut and fill volumes across the Site.

Overall, the abovementioned justifications are considered valid and, in this instance, the proposed Clause 4.6 Variation is considered to be acceptable. The objectives of the relevant clauses and the R2 Low Density Residential zone would be upheld as a result of the Proposed Development.

### **4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The variation to the development standard for building height (Clause 4.3) under the Sydney Region Growth Centres SEPP is considered well-founded on the basis that:

- The Proposed Development is entirely consistent with the underlying objective(s) or purpose of the building height standard, as demonstrated in **Section 4.1**.
- The Proposed Development fully achieves the objectives of the Sydney Region Growth Centres SEPP for the R2 Low Density Residential zoned, as described in **Section 4.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The Proposed Development generally maintains the heights experienced through Educational Establishments in close proximity to the Subject Site, i.e. The Ponds High School and Rouse Hill Anglican College, for which the Proposed Development would be further complemented by.

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- Materials and finishes would activate and provide a visual outcome that seamlessly integrates with the surrounding rural-residential character of the R2 zone, via adherence to the Zone objectives. Additionally, landscaping, colour and material direction would be utilised (where possible) to blend with the varied architectural forms.
- The Proposed Development incorporates suitable setback controls and separation distances (where required) in accordance with the BCC Growth Centres DCP.
- The overall scale of the Proposed Development is considered generally consistent with similar Educational Establishments in close proximity to the Subject Site, being compatible in terms of built-form and scale. Additionally, the Proposed Development would promote the R2 zone objectives, particularly the objective of providing a facility that services the day-to-day needs of residents and the wider community. This would in turn provide an employment-generating land use during the construction phase (and some opportunities during the operational phase) of development, that is considered to respond accordingly to shifting economic conditions in the area, as a result of urban growth in the North West Growth Centre.
- The Proposed Development, particularly the proposed height would integrate with the local and regional context, with respect to established heights of school buildings and associated components, including the proposed Place of Public Worship, which attains the largest height exceedance across the Site.
- The Proposed Development would revitalise the Site's landscaping aesthetic, by strategic architectural landscape design, through a dichotomous selection of native and endemic flora species, including an array of trees, plant species, shrubs and grasses, which would improve the overall floristic character of the Site.
- It is considered, that there would be no unreasonable additional views compromised by the Proposed Development. The heights selected throughout the Site are considered to respond to the Site topography and the adjoining and neighbouring residential land uses.
- The additional building height proposed would contribute to a positive visual outcome and uniform streetscape.
- The Proposed Development would protect neighbouring amenity, with respect to views, privacy, overshadowing and solar access.
- The concentration of built-form across the Site (as allowed by the proposed additional building height) maximises the area of open space. This is important in the effective integration of the School in its environment, as well as achieving open space requirements.
- Consolidated built form (and the additional building height) is also required to ensure the school buildings are sited completely outside of the identified hazard zones, with regard to flooding, experienced across the Site, for which the EIS and specialist consultant reports analyse further.
- The locality would benefit through the increased provision of available infrastructure, such as a new Educational Establishment, including the Early Learning Centre and ancillary Place of Public Worship (Gurdwara & Langar).

For the reasons outlined above, it is considered that the proposed variation to the building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of the Sydney Region Growth Centres SEPP.

## **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)**

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### **4.5 PUBLIC INTEREST**

It is noted, that Subclause 4.6(4)(a)(ii) requires the Proposed Development 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.

**Sections 4.1** and **4.2** have already demonstrated how the Proposed Development is consistent with the objectives of Clause 4.3 and the R2 Low Density Residential under the Sydney Region Growth Centres SEPP. Accordingly, the Proposed Development is in the public interest, as it is consistent with the overarching height objectives. It would also contribute towards meeting the demand for employment opportunities during both the construction and operational phases of development, whilst providing an infrastructure service to the wider community, that is considered in line with the strategic objectives identified within *A Metropolis of Three Cities*, the *Central City District Plan* and the *North West Priority Growth Area – Land Use and Infrastructure Implementation Plan*.

Specifically, the Proposed Development would be of social benefit to the Rouse Hill community and the wider Blacktown LGA, as it would revitalise an underutilised land portion, for which it would provide an infrastructure service, which is considered a direct response to local and regional strategic planning.

There are no significant public disadvantages which would result from the Proposed Development.

The Proposed Development is therefore considered to be justified on public interest grounds.

### **4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE**

The proposed non-compliance with Clause 4.3 of the Sydney Region Growth Centres SEPP would not raise any matters of significance for State or Regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under Section 9.1 of the EP&A Act.

It is noted, that Planning Circular – PS 08-014 – issued by the NSW Department of Planning and Environment (DPIE), requires that all Development Applications, including a variation to a standard of more than 10% be considered by Council, rather than under delegation. The Proposed Development would result in exceedances of the relevant planning controls as follows:

- Sydney Region Growth Centres SEPP, Clause 4.3 Height of Buildings by 9.19 m, or by 102%.

This non-compliance is more than 10% prescribed in the stipulated planning circular.

Furthermore, by including the non-compliance with Clause 4.3 of the Sydney Region Growth Centres SEPP, the Proposed Development would be more susceptible to being able to meet the objectives of the following State Government planning policies:

- *A Metropolis of Three Cities:*
  - By providing a greater height at the Site, the Proposed Development can respond to the Greater Sydney Commission's vision and NSW Government's aim of increasing the availability and provision of schools in the wider Sydney Metropolitan Area.
- *Central City District Plan:*
  - By providing a greater height at the Site, the Proposed Development can better respond to the Greater Sydney Commission's vision for continued infrastructure growth and diversity experienced within the Central City District.
- *North West Priority Growth Area – Land Use and Infrastructure Implementation Plan 2018:*
  - By providing a greater height at the Site, the Proposed Development can better respond to the NSW Government's strategic vision for infrastructure, particularly with the

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education sector with NSW, by providing a State-of-the-Art Educational Establishment to an area earmarked for such intended exponential growth and demand.

### 4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARDS

Given that strict compliance with Clause 4.3 of the Sydney Region Growth Centres SEPP would result in:

- Not contribute towards meeting the demand for new infrastructure (schools) within the North West Priority Growth Area, within the Blacktown Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Central City District Plan*, by potentially resulting in a reduction in available building footprint across the Site and consequently future permissible land uses on the Site;
- Threaten the commercial viability of the Proposed Development by reducing the overall achievable maximum height across the Site, by which would impact on end-user operational requirements for the Sikh Grammar School;
- Create fewer full-time equivalent employment opportunities during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred heights across the Site not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential in an area earmarked for such exponential growth and demand.

As such, there is no genuine public benefit in maintaining this strict height of building Development Standard at the Subject Site.

### 4.8 OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the Objects of the Act in accordance with Section 1.3 of the EP&A Act. **Table 2** below assesses the Proposed Development against the Objects of the Act.

Table 2: Objects of the Act – EP&A Act	
Object	Proposed Development Compliance
The objects of this Act are as follows:	
(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 Development is considered to be in the public interest as it would contribute towards meeting the demand for increased infrastructure and employment opportunities during the construction and operational phases of development with the Blacktown LGA, as identified within <i>A Metropolis of Three Cities</i> , the <i>Central City District Plan</i> and the <i>North West Priority Growth Area – Land Use and Infrastructure Implementation Plan 2018</i> . Specifically, the Proposed Development would be of social benefit to the community situated within Rouse Hill, as it would provide a major infrastructure service for the immediate locality.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The Proposed Development has been assessed against the principles of Ecologically Sustainable Development as set out in the <i>Protection of the Environment Operations (General) Regulation 2009</i> as follows.



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	<p>The Proposed Development would not create the risk of serious or irreversible damage to the environment.</p> <p>Ultimately, the Proposed Development would not create any threats of serious or irreversible environmental damage, which would require further scientific study to fully ascertain.</p> <p>The Proposed Development would not impact on the conservation of biological diversity or the ecological integrity of the locality.</p> <p>The Proposed Development would not require an Environmental Protection Licence or other mechanism to compensate for any pollution generating activities at the Site.</p>
<p><i>(c) to promote the orderly and economic use and development of land,</i></p>	<p>The Proposed Development would make use of a site that is currently considered to be underdeveloped and underutilised, for which it would result in orderly and economically beneficial development, without resulting in any unacceptable economic, environmental or social impacts.</p>
<p><i>(d) to promote the delivery and maintenance of affordable housing,</i></p>	<p>Not relevant to the Proposed Development.</p>
<p><i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i></p>	<p>It is noted, that the Subject Site is identified under the Growth Centres as Biodiversity Certified land. The Subject Site does not contain any species protected and listed under the EPBC Act and BC Act. Further, the Proposed Development would not impose an impact on MNES and / or ecological impact in any such way.</p>
<p><i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p>	<p>The Site does not contain, and nor is it in the vicinity of any heritage items listed under both the NSW State Heritage Register and <i>Blacktown Local Environmental Plan 2015</i>.</p> <p>The Site has been previously disturbed and is therefore subject to significant levels of disturbance. The potential for the Proposed Development to uncover any unrecorded items of Aboriginal Cultural Heritage significance is therefore considered to be low. In the unlikely event that potential Aboriginal Cultural Heritage items or human remains are uncovered at the Site, works in vicinity of the find would cease, and the NSW OEH and NSW Police would be contacted as deemed appropriate.</p>
<p><i>(g) to promote good design and amenity of the built environment,</i></p>	<p><b>Section 4.1</b> satisfactorily addresses how the Proposed Development responds to the character of the locality in terms of urban design.</p>
<p><i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i></p>	<p>The Proposed Development can be constructed and maintained without health and safety risks to the future end-user – The Sikh Grammar School Australia.</p>
<p><i>(i) to promote the sharing of the responsibility for environmental</i></p>	<p>The Proposed Development has a Capital Investment Value of approximately \$147,073,283 Million</p>

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<i>planning and assessment between the different levels of government in the State,</i>	(excluding GST) for a new school. As such, it is classified as State Significant Development, for which it would be determined by the NSW DPIE.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	This SSD Application, with respect to the Proposed Development, would be subject to the relevant public notification and exhibition requirements.

### 4.9 SUMMARY

For the reasons outlined above, it is considered that the objections to Clause 4.3 of the Sydney Region Growth Centres SEPP are well-founded in this instance and the granting of Clause 4.6 Variations to these Development Standards are appropriate in the circumstances. Furthermore, the objection is considered to be well-founded for the following reasons, as outlined within Clause 4.6 of the Sydney Region Growth Centres SEPP:

- Compliance with the Development Standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The Proposed Development is in the public interest;
- The Proposed Development is consistent with the objectives of the particular standard;
- The Proposed Development is consistent with the objectives for development within the R2 Low Density Residential zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The Proposed Development does not negatively impact on any matters of State or Regional significance; and
- The public benefit in maintaining strict compliance with the Development Standard would be negligible.

It is furthermore submitted, that:

- Strict compliance with the Development Standard would hinder the achievement of the Objects of the Act in accordance with Section 1.3 of the EP&A Act (refer to **Table 2** above);
- The Proposed Development would contribute towards meeting the demand for additional infrastructure with regard to schools with the Blacktown LGA and wider North West Priority Growth Area, as identified within *A Metropolis of Three Cities*, the *Central City District Plan* and the *North West Priority Growth Area – Land Use and Infrastructure Implementation Plan 2018*; and
- No unreasonable impacts are associated with the Proposed Development.

Overall, it is considered that the proposed Clause 4.6 Variation to the Development Standard outlined with Clause 4.3 Height of Building pursuant to the Sydney Region Growth Centres SEPP is entirely appropriate and can be clearly justified having regard to the matters listed with Clause 4.6 of the Sydney Region Growth Centres SEPP.

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### PART E CONCLUSION

It is requested, that the NSW DPIE (and Council) exercise their discretion and find, that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by Subclauses 4.6(3) of the Sydney Region Growth Centres SEPP (refer to **Section 2.1**).

This is particularly the case, give that a hypothetical compliant design at the Site would:

- Not contribute towards meeting the demand for new infrastructure (schools) within the North West Priority Growth Area, within the Blacktown Local Government Area (LGA), as identified within *A Metropolis of Three Cities* and the *Central City District Plan*, by potentially resulting in a reduction in available building footprint across the Site and consequently future permissible land uses on the Site;
- Threaten the commercial viability of the Proposed Development by reducing the overall achievable maximum height across the Site, by which would impact on end-user operational requirements for the Sikh Grammar School;
- Create fewer full-time equivalent employment opportunities during the construction and operational phases of development due to a decrease in footprint and potential disinterest in the Site due to preferred heights across the Site not being able to be achieved; and
- Fail to meet the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by making orderly and economic use of the Site for its full planning potential in an area earmarked for such exponential growth and demand.

It is requested that Council and the NSW Department of Planning and Environment supports the proposed variation to Clause 4.3 Height of Buildings of the Sydney Region Growth Centres SEPP for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the Proposal.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation under the Sydney Region Growth Centres SEPP is well founded and should be favorably considered by the NSW DPIE. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this Report, concurrence can be assumed under Clause 4.6(5).