



CLAUSE 4.6 VARIATION REQUEST

Bella Vista Station Precinct Concept SSDA

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Bella Vista Station Precinct Concept SSDA

Prepared for

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1 Introduction

This written submission requests an exemption to a development standard pursuant to clause 4.6 of *The Hills Local Environmental Plan 2019* (**THLEP 2019**).

This clause 4.6 variation request seeks to vary the 5m minimum building setback development standards set out in subclause 8.4(a) of THLEP 2019 for development within the R1 General Residential Zone and subclause 8.4(b) of THLEP for a residential flat building in the B2 Local Centre zone.

This clause 4.6 variation request has been prepared to support the revised setback scheme for State significant development (**SSD**) application SSD 10344 seeking consent for the Bella Vista Station Precinct Concept SSDA (**concept SSDA**), as amended following the public exhibition of the concept SSDA and consideration of submissions received. While the SSD application does not involve the construction of any building, it is unclear whether this variation request is required at this stage or at subsequent DA stages for built form. Notwithstanding, this clause 4.6 variation request has been prepared for abundant caution as the application seeks approval for design guidelines that will inform future development across the Bella Vista Station Precinct SSD site.

The amended concept SSDA for the Bella Vista Station Precinct is further detailed in the Response to Submissions Report.

1.1 Overview of justification for setback variation request

Landcom (the **Applicant**), on behalf of Sydney Metro, has lodged a SSD application with the Department of Planning, Industry and Environment (**DPIE**) seeking approval of a concept SSDA that sets out the Bella Vista Station Precinct concept proposal and establishes the framework and design guidelines for future development. The concept SSDA also seeks consent for principal subdivision of public domain areas as the first stage of development.

Reduced 2m building setbacks are proposed in the R1 General Residential and B2 Local Centre zones. In conjunction with the proposed expansion to the pre-existing road network and associated street typologies, the proposed reduced building setbacks will help to facilitate legible and highly active urban interfaces with the station precinct.

The proposed variation to the minimum building setback development standards within the R1 and B2 zones results from the characteristic of the site and vision and objectives for the Bella Vista Station Precinct. This vision seeks to create a '21st Century Living and Business Precinct' that provides a range of housing and employment opportunities close to transport with a convenient and walkable local centre as well as strong connections to high quality open spaces and a natural creek line. The scheme will deliver diverse housing for different generations and lifestyles in a setting that encourages connectivity and wellbeing.

In summary, proposed variations to the setback standard in subclauses 8.4(a) and (b) are justified for the following reasons:

- the underlying objectives of the setback development standard are achieved notwithstanding the proposed variation to the development standard

- existing environmental and site constraints limit the ability for the concept SSDA to achieve the vision for the Bella Vista Station Precinct
- the application of proposed setbacks will create a better planning outcome than that which would be achieved by ensuring strict compliance with the 5m minimum building setback
- it is in the public interest as the concept SSDA is consistent with the objectives of the R1 General Residential and B2 Local Centre land use zones under *The Hills Local Environmental Plan 2019* (THLEP 2019)
- the concept SSDA proposes robust design guidelines that will satisfactorily guide future development within the station precinct to ensure a vibrant and active community with access to high levels of amenity is achieved
- non-compliance with the 5m minimum building setback development standard is site specific and does not raise any matters of State and regional planning significance
- there would be no unacceptable impacts arising as a consequence of the variation to the development standard outlined in clauses 8.4(a) and 8.4(b) of THLEP 2019.

Given the above circumstances, the proposed variation to the 5m minimum building setback to 2m is considered reasonable, and satisfies the 'tests' (established by NSW Case law) when considering a variation to development standards. This is further discussed in Section 3 of this application.

Furthermore, following additional consultation with the SDRP dated 5 May 2020, it has been advised the SDRP support the reduced 2m setback in the residential areas and zero metre setback in commercial areas in the Bella Vista Station Precinct where the benefit to the public domain and / or increased private communal open space can be demonstrated. Additional details of the benefit to communal open space from the proposed setbacks are provided in the Response to Submissions report prepared by Hassell. It should be noted the zero metre setback in commercial areas does not form part of this variation request.

1.2 Project background

Sydney Metro is Australia's biggest public transport project. As a new standalone railway, this 21st century network will revolutionise the way Sydney travels.

NSW Government owned land surrounding the Bella Vista Station and other Metro North West Line (MNWL) Stations, is no longer required to support metro construction and operations. This land will be made available for development that supports NSW Government priorities of housing affordability, local infrastructure delivery and economic development.

The Bella Vista Station Precinct (**the site**) is located in North West Sydney in The Hills Shire local government area (LGA). The site is comprised of land owned by, or under the control of, Sydney Metro and OSL within the boundary of Bella Vista Station Precinct as defined by the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) (see **Figure 1**).



Source: www.nearmap.com (adapted by GLN Planning)

Figure 1: Context of the Bella Vista Station Precinct Site

Under the Sydney Metro North West Places (**SMNWP**) program, Landcom and Sydney Metro are working collaboratively with the DPIE, local councils, including The Hills Shire Council (**Council**), and other government organisations and key stakeholders, to develop the long-term vision and delivery program to guide the transformation of approximately 65 hectares (**ha**) of government owned or controlled land around new MNWL station precincts.

This delivery program will be undertaken over the next 10 to 15 years and will facilitate:

- early activation around new metro stations to provide safe and vibrant spaces for metro customers and local communities to use when the metro services commence
- mixed use areas that are active and walkable, and that capitalises on the fast and frequent connections provided by the new metro system
- attractive and well-designed public spaces and buildings
- creative, affordable and diverse housing solutions
- infrastructure to support the long-term growth of the corridor
- strong local economies by attracting long-term investment and a diverse range of jobs.

The SMNWP Program will deliver a vibrant and integrated precinct around the new metro stations, including Bella Vista Station.

The proposed transformation of the Bella Vista Station Precinct will be facilitated by the proposed concept SSDA lodged by Landcom under section 4.38(1) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) that seeks consent for the Bella Vista Station Precinct concept proposal and the principal subdivision of public domain areas as the first stage of development pursuant to section 4.22(2) of the EP&A Act.

1.3 Authority to vary a development standard

Clause 4.6 of THLEP 2019 recognises that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the standard can be achieved as outlined below.

"4.6 Exceptions to development standards"

- (1) *The objectives of this clause are as follows:*
 - (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.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (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 Secretary 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 Secretary before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4*
 - (ca) clause 6.2 or 6.3*
 - (cb) clause 7.11*
 - (cc) clause 7.15."*

Clause 4.6 establishes the framework for varying development standards applying under an Environmental Planning Instrument. Subclauses 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the Applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In addition to the parameters set out in clause 4.6, a number of key decisions of the NSW Land and Environment Court provide guidance in justifying a variation to a development standard. These include:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
- *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386
- *Moskovich v Waverley Council* [2016] NSWLEC 1015

Consistent with the statutory requirements set out in clause 4.6, and as guided by the above case law, this request to vary a development standard:

- identifies the development standard to be varied
- identifies the extent of the variation sought
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances
- demonstrates that there are sufficient environmental planning grounds to justify the proposed variation
- demonstrates 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 of the R1 General Residential and B2 Local Centre land use zones.

Pursuant to subclause 4.6(4)(a) and in granting development consent for the proposed development, the consent authority can be satisfied that:

- this written request adequately addresses the matters required to be demonstrated by subclause 4.6(3)
- 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 zones.

This written submission should be read in conjunction with the Environmental Impact Statement (**EIS**) and Response to Submissions report (**RtS**) prepared by GLN Planning for the Bella Vista Station Precinct concept SSDA.

2 Development standard to be varied

2.1 Clause 8.4 Minimum building setbacks of THLEP 2019

A variation is requested to subclauses 8.4(a) and (b) of THLEP 2019 which specifies the minimum building setbacks for development on land within the Bella Vista Station Precinct in the R1 General Residential and B2 Local Centre zones.

This is a development standard as defined by section 1.4 of the EP&A Act.

Clause 8.4 requires:

Development consent must not be granted to development on land within the Bella Vista Station Precinct or the Kellyville Station Precinct unless the front building setback of any building resulting from the development is equal to, or greater than, the following:

- (a) for a building in Zone R1 General Residential or Zone R4 High Density Residential – 5 metres, (emphasis added)*
- (b) for a residential flat building in Zone B2 Local Centre – 5 metres, (emphasis added)*
- (c) for a building in Zone B7 Business Park with a street frontage to Old Windsor Road, Kellyville, north of Celebration Drive, Kellyville – 10 metres from the eastern edge of the Old Windsor Road road reserve.*

Clause 8.4 of THLEP 2019 does not contain any specific objectives.

Notwithstanding, the underlying objective of a setback control is considered to be:

- Providing an appropriate streetscape and character that fits with the vision of the town centre;
- Creating an attractive and convenient 21st Century Living and Business Precinct around the station; and
- Providing separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level.

Council's submission made during the public exhibition of the concept SSDA stated that the minimum setbacks as outlined in clause 8.4 of THLEP 2019 were the result of detailed precinct planning completed by the NSW Government, but did not allow for the provision of appropriate landscaped setbacks and deep soil zones, and substantially varied from Council's standard 10m front setback requirement for residential apartment buildings.

The Bella Vista Station Precinct envisages the creation of a '21st Century Living and Business Precinct' that provides housing choice and jobs close to transport connections, fosters strong connections to the natural attributes of open space areas along Elizabeth Macarthur Creek, and connects with district views within a human scale urban setting. The station precinct will provide an active, inviting and walkable urban environment.

To ensure this vision is met, the concept SSDA is supported by a comprehensive suite of development design guidelines and objectives that will direct the future design and construction of buildings and infrastructure within the Bella Vista Station Precinct. This includes guidelines and objectives that seek to:

- define and reinforce distinctive character within the precinct and deliver diverse and unique architectural forms
- reduce the scale of buildings as perceived from the public domain
- provide buildings that positively contribute to the physical definition of the public domain
- locate height and density towards the town centre, along Mawson Avenue and at select street corners to modulate height and scale
- create a consistent built form and street wall scale along streetscapes
- maximise solar access to public domain areas and communal areas
- provide continuous business and retail uses in the town centre that open directly onto the footpath and public domain and provide activity and enhance security and passive surveillance
- maximise street activation in the town centre throughout the day, night and week.

The proposed variation to the setback development standards will allow for the establishment of vibrant and active station precinct and provide for an improved planning outcome for the Bella Vista Station Precinct SSD site. This is discussed in further detail in Section 3.1 of this request.

2.2 The land subject to this proposed variation

This clause 4.6 variation request to vary subclauses 8.4(a) and (b) of THLEP 2019 applies to land zoned R1 General Residential and B2 Local Centre under THLEP 2019 within the Bella Vista Station Precinct SSD site as shown in **Figure 2**.

2.3 Site context

The site is irregular in shape and is contained within an area bound by Old Windsor Road to the west and Elizabeth Macarthur Creek to the east. The site is bound along its northern boundary by Memorial Avenue and Celebration Drive along its southern boundary. The MNWL corridor runs along the western edge of the site before transitioning to the elevated alignment over the North-West T-Way. The site is made up of 26 allotments and has a total area of approximately 33.79ha.

The site encompasses existing infrastructure previously delivered during the construction and delivery of MNWL under SSI-5414. This comprises Bella Vista Station and ancillary station infrastructure and public domain, a new 800 space multi-level commuter car park and a partial new local street network and associated road and intersection upgrades within the southern Celebration Drive to Balmoral Road portion of the site.

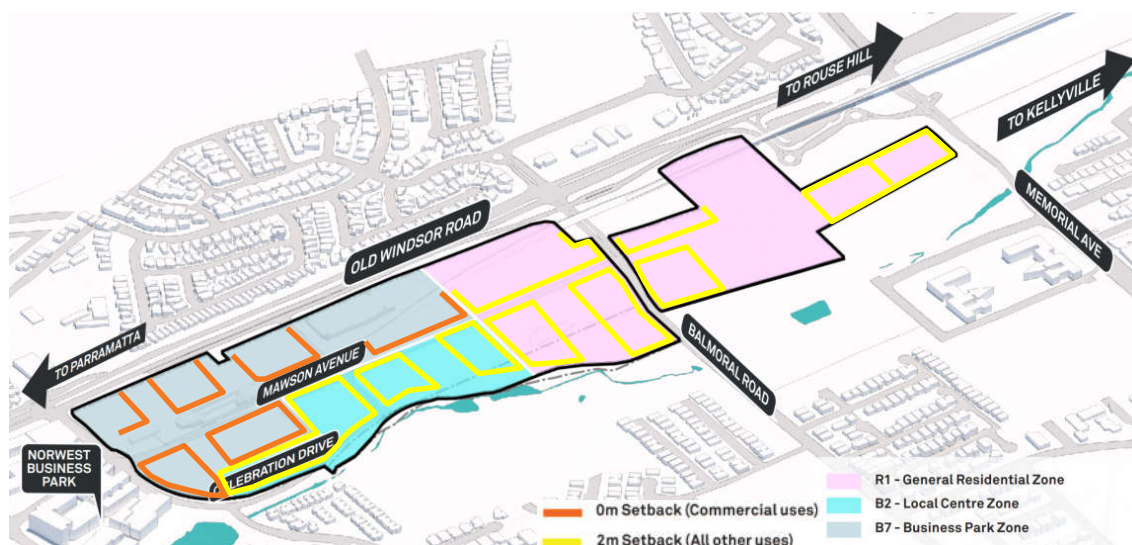
Activities associated with the site's former commercial and rural residential land uses and Sydney Metro SSI project approval works has resulted in large areas of disturbance and cleared vegetation. Remaining areas of scattered native vegetation are located on riparian corridor land adjacent to Elizabeth Macarthur Creek and in small areas north of Balmoral Road.

Future built form will be subject to separate Development Applications and include a range of mixed use and residential buildings that will provide a range of interface opportunities by:

- (1) establishing active street frontages along key roads
- (2) drawing residents and workers closer to Elizabeth Macarthur Creek and enshrine the green character of the site
- (3) providing vibrant interfaces between footpaths, roads, public open space and building entrances and lobbies.

The locality is undergoing substantial change from its predominantly rural residential land use to a high density urbanised transit oriented precinct, and has been rezoned to cater for future business, mixed use and residential development within the Bella Vista Station Precinct.

The site is zoned part R1 General Residential, B2 Local Centre Residential and B7 Business Park under THLEP 2019. The site's zoning and approximate location of development block setbacks is illustrated in **Figure 2**.



Source: Hassel Studio

Figure 2: Bella Vista Station Precinct Land Use Zoning under THLEP 2019

Land to the north of the Bella Vista Station Precinct, beyond Memorial Avenue and sections east of Elizabeth Macarthur Creek are zoned R4 High Density Residential. Land to the south is zoned B7 Business Park, consistent with the zoning at the southern extent of the Bella Vista Station Precinct. Land zoned to the east transition away from the higher density zonings found within the station precinct, and along the Elizabeth Macarthur Creek corridor to a mixture of R2 Low Density Residential and R3 Medium Density Residential land. Land to the west is zoned SP2 Infrastructure (consisting of Old Windsor Road), with R2 Low Density Residential land beyond in the Blacktown LGA.

2.4 Extent of variation

The proposed concept SSDA sets out the concept proposal for the Bella Vista Station Precinct to guide the future urban renewal of the station precinct. Site-specific urban design controls have been developed to ensure optimal design and amenity outcomes are achieved across the site, including detailed public domain, street interface and street setback controls.

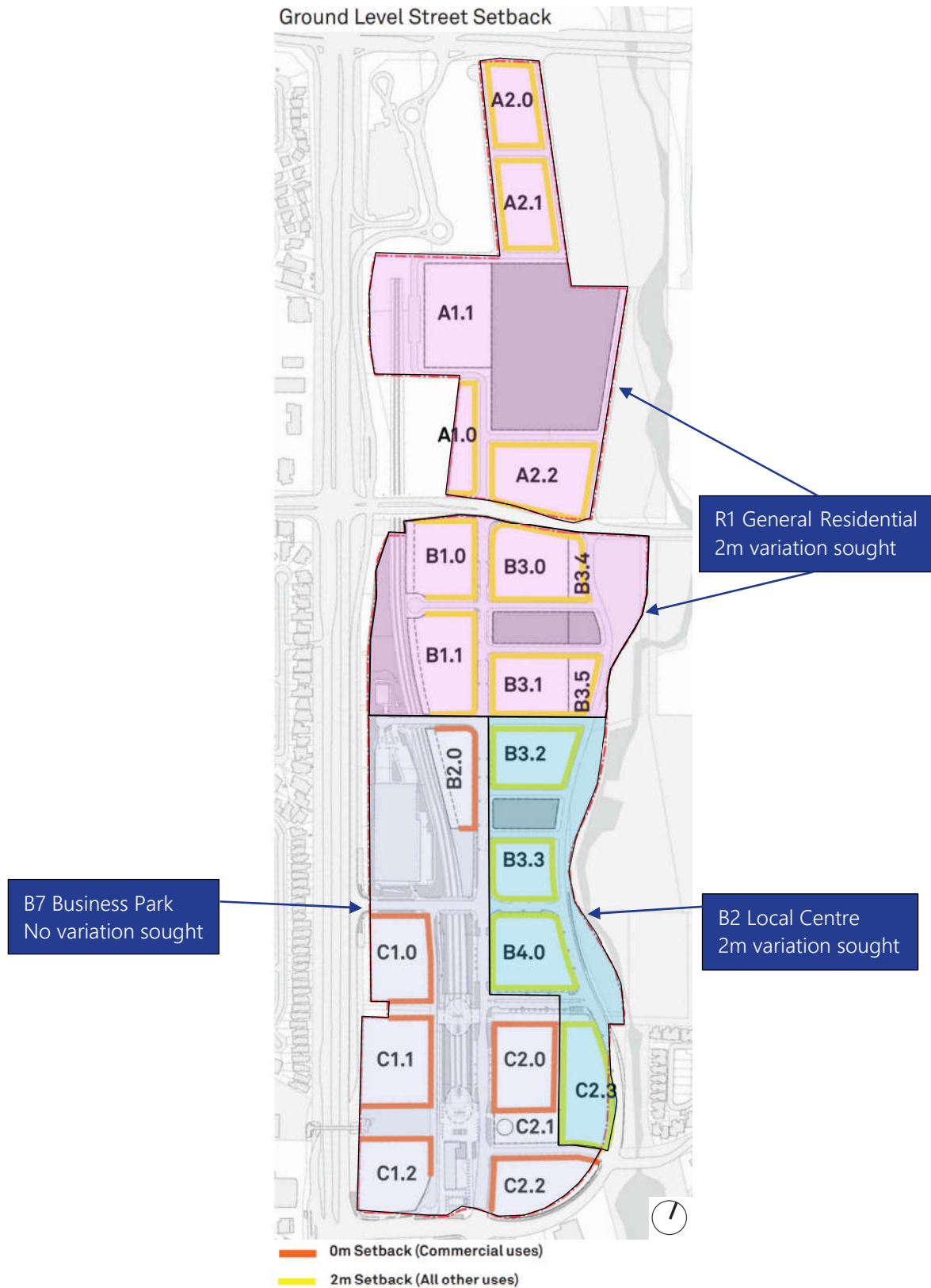
A comparison between the minimum building setback requirements under clause 8.4 of THLEP 2019 to that proposed by this concept SSDA is detailed in **Table 1** below.

This variation request supersedes the clause 4.6 variation request submitted with the EIS. Following further consultation with THSC regarding building setbacks, a revised setback scheme that prescribes a reduced 2m setback to all uses in the B2 and R1 zones is proposed.

Locations of all proposed setbacks under the SSDA application area provided in **Figure 3**. Section plans of the interface between residential and commercial areas with these setbacks are provided in **Figure 4** to **Figure 6**.

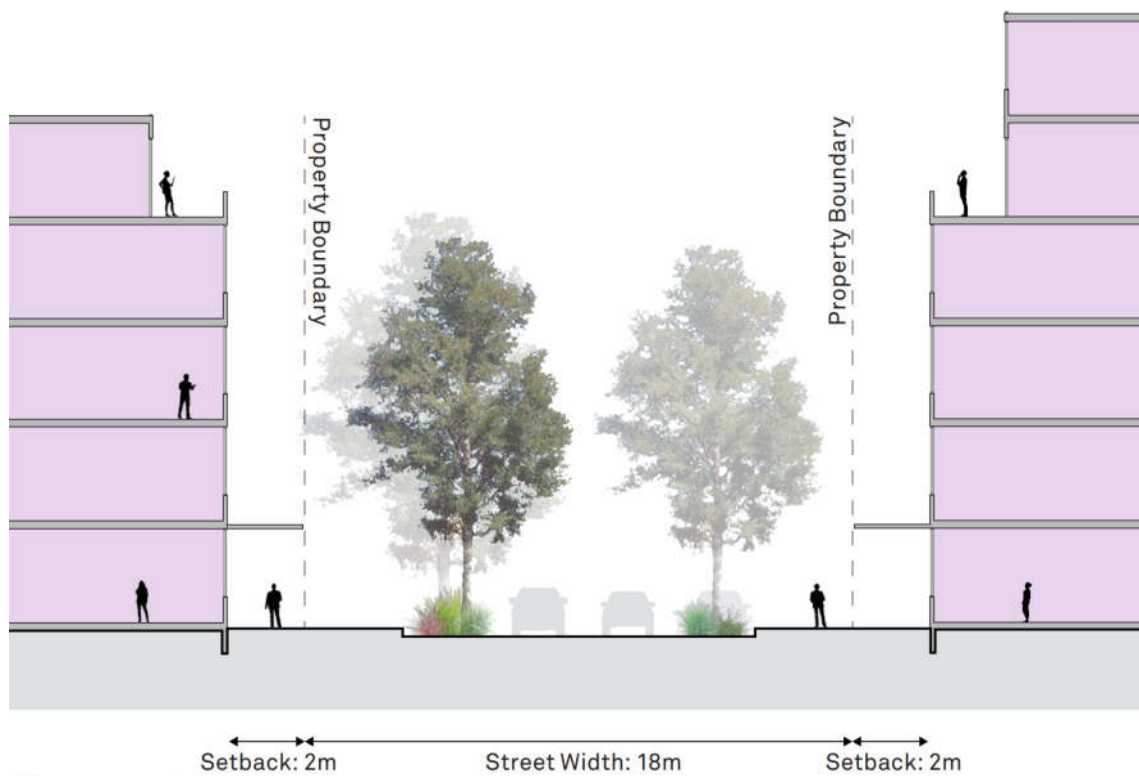
Table 1 Bella Vista Station Precinct Setbacks Variations

| Land Use Zone | Setbacks | |
|--|-------------------------|---|
| | THLEP 2019 Standard (m) | Bella Vista Station Precinct Proposal (m) |
| R1 General Residential (any building) (Clause 8.4(a)) | 5m | <ul style="list-style-type: none"> 2m for all development blocks No setback control for the school site |
| B2 Local Centre (residential apartment building) (Clause 8.4(b)) | 5m | <ul style="list-style-type: none"> 2m for a residential flat building |



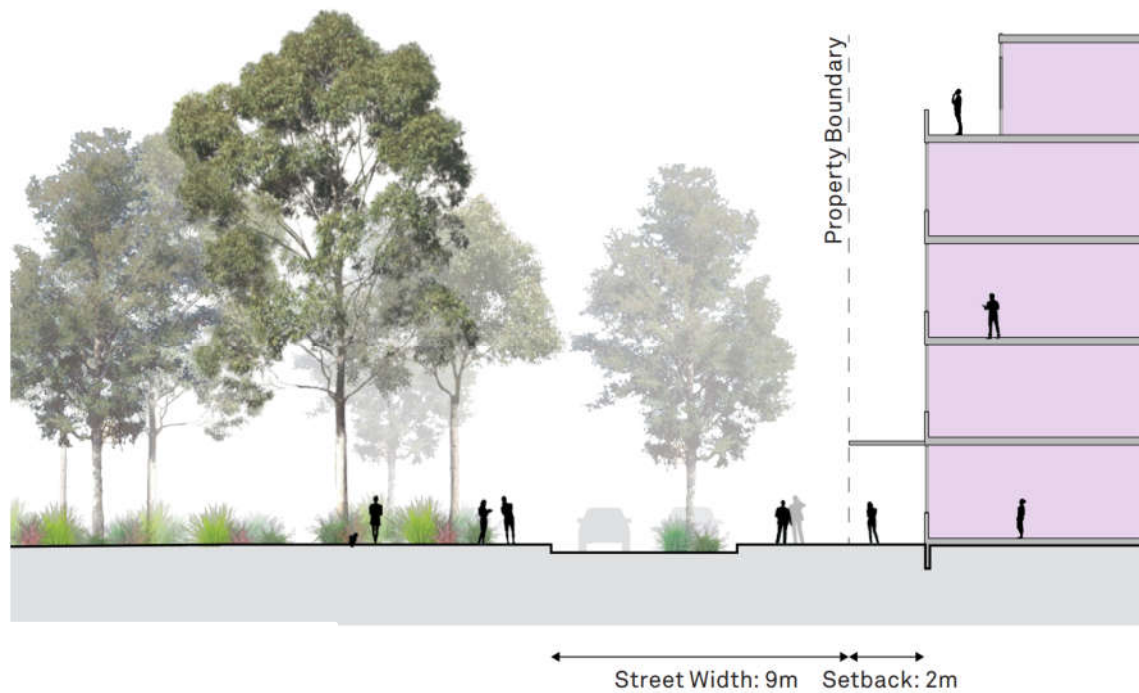
Source: Hassel Studio

Figure 3: Location of proposed and amended setback controls



Source: Hassell Studio

Figure 4: Street Section – Local two-way street



Source: Hassell Studio

Figure 5: Street Section – Local one-way street



Source: Hassell Studio

Figure 6: Street Section – Main Street under a residential ground floor condition

3 Justification for development standard contravention

3.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6(3)(a))

Clause 4.6(3)(a) requires the Applicant to provide justification that strict compliance with the density requirement is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council (2007) NSWLEC 827*, Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. Regard is also had to the Court's decision in *Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, which elaborated on how these five ways ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone.

In addition to the above, Preston CJ further clarified the appropriate tests for a consideration of a request to vary a development standard in accordance with clause 4.6 in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. This decision clarifies a number of matters including that:

- the five ways to be satisfied about whether to invoke clause 4.6 as outlined in *Wehbe* are not exhaustive (merely the most commonly invoked ways)
- it may be sufficient to establish only one way;
- the written request must be "sufficient" to justify contravening the development standard; and
- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.

It is our opinion that the concept SSDA satisfies a number of the five ways established in *Wehbe* that demonstrate that the development standard is unreasonable and unnecessary in this instance, for the reasons set out below.

3.1.1 1st Way – The objectives of the standard are achieved notwithstanding non-compliance with the standard

As outlined above, clause 8.4 of THLEP 2019 does not contain any specific objectives that express the purpose of the development standard.

Notwithstanding, the underlying objectives of a minimum building setback control is considered to be ones that:

- Provide an appropriate streetscape and character that fits with the vision of the site;
- Create an attractive and convenient 21st Century Living and Business Precinct around the station; and

- Provide separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level.

The above objectives need to be understood in the context of the vision for the Bella Vista Station Precinct to be a new 21st Century Living and Business Precinct, based on high density transit orientated development principles with a variety of housing typologies, local retail services and strong connectivity to the MNWL station.

The ways in which the proposed setbacks are considered to achieve these objectives are detailed below, and should be read in conjunction with **Figures 3 to 6**.

Provide an appropriate streetscape and character that fits with the vision of the town centre

- Despite the non-compliance, the setback achieves the first implicit objective of the setback development standard because it fits the envisaged streetscape and urban character outcome, while still providing a uniform and coherent streetscape.
- The proposed setbacks create a streetscape and character for the precinct that reflects the envisaged attractive, convenient and walkable local centre. The setback contained in THLEP 2019 does not align with the proposed urban character of the Bella Vista Station Precinct, designed street level and urban design outcomes of a vibrant and well-connected transit orientated precinct. Increased setbacks, particularly at the ground level, are likely to create a disconnection between future buildings and surrounding public domain and streets.
- Reduced setback requirements at locations adjacent to public domain and open space areas provides improved opportunities for more direct connections to local open space and plaza spaces and limits potential for perceived bulk and scale impacts.
- The application of a 2m setback for all uses outside of the B7 Business Park zone provides for an improved transition from the more urbanised character surrounding Bella Vista Station that would also provide a coherent streetscape across the site.

Create an attractive and convenient 21st Century Living and Business Precinct around the station

- Strict compliance with the 5m setback requirement for future residential apartment buildings in the B2 Local Centre zone would be inconsistent with mixed use and commercial built form outcomes within the town centre.
- The 2m setback would enable the establishment of the envisaged landscaped streetscape character. The station precinct road hierarchy has been designed to allow a strong green character to be established that will be interspersed with street trees on both sides of the road carriageway. This includes a range of public verges between 500mm and 2.5m wide with structural soil systems to ensure tree canopy growth.
- Reduced setbacks of 2m would provide more direct connections to open space and green spaces. The setbacks also limit the potential for perceived bulk and scale impacts as future built form would not be prominently read from vantage points provided by wider footpaths and interface areas along key vehicular and pedestrian connections.

- A reduced 2m setback will provide a more efficient use of space for new forms of residential and non-residential and more direct connections for new and existing commercial development, while still allowing a transition between private and public space.

Provide separation between potential residencies and the road as a means of achieving expected levels of amenity at ground level

- Reduced 2m setbacks will provide improved passive and formal surveillance of thoroughfares and promote active street frontages by bringing windows, doorways and building entrances/lobby areas closer to the street, consistent with the Bella Vista Finalisation Report for the precincts rezoning.

3.1.2 2nd Way - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

As discussed above, clause 8.4 does not specify any objectives for the setback development standards. Therefore, this way to consider the variation is not relevant in this case.

3.1.3 3rd Way - The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

Clause 8.4 does not provide any specific objectives for the setback development standards. The following sections detail how the proposed setbacks for the Bella Vista SSDA site achieve the implicit objectives of the building development setback standard under THLEP 2019.

Provide an appropriate streetscape and character that fits with the vision of the town centre

- The masterplan framework for the Bella Vista Station Precinct has been developed to ensure that specific urban outcomes are achieved, consistent with the land use zoning objectives and vision for the site. Distinct character areas are proposed to be established that transition between the station precinct town centre, residential core and local hub. In order to achieve this, specific setback controls are prescribed in the design guidelines to provide a transition over the site including:
 - proposed zero metre ground level setbacks in the B7 Business Park zoned land (not part of this variation request)
 - proposed 2m setbacks in the R1 General Residential and B2 Local Centre land use zones for all other uses.

Create an attractive and convenient 21st Century Living and Business Precinct around the station

- The effect of the specified 5m setback control pushes built form away from the public domain and is not considered favorable to the establishment of a 21st Century Living and Business Precinct and transit oriented development environment that is active and vibrant at the street level. The application of reduced setbacks along the frontages of each development block allows for a more efficient use of space, while providing for a transition between private and public space and promotes a walkable, convenient and active street network extending along Mawson Avenue and Elizabeth Macarthur Creek.

Provide separation between potential residences and the road as a means of achieving expected levels of amenity at ground level

- The proposed setbacks would still achieve a separation between future buildings and the range of pedestrian and shared paths across the site, while still providing space to develop a strong landscape character for ground level amenity and privacy.

Given the above, it is therefore considered that strict compliance with the specified uniform 5m setback control would not meet the underlying transit oriented urban environment outcome objective of the development standard. The underlying objective would therefore be thwarted if compliance was required.

3.1.4 4th Way - The development standard has been virtually abandoned or destroyed by the Council's own decisions

As this concept SSDA will facilitate the first urban development within the station precinct, beyond the MNWL infrastructure previously delivered, and does not involve any built form, this way of considering the variation is unlikely to be relevant to this concept SSDA.

3.1.5 5th Way – The zoning of the site is unreasonable or inappropriate and consequently so is the development standard.

This way to consider the variation is not relevant in this case.

3.2 Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))

The environmental planning grounds which support the contravention to the residential density standard relate to:

- pre-existing environmental and site constraints that restrict the concept SSDA's ability to achieving the project vision for the Bella Vista Station Precinct. These constraints consist of:
 - an existing local road network that is physically constrained by the MNWL alignment and its transition from a tunnel to the rail cutting and then to the MNWL skytrain over the North West T-Way along its western edge, and by the Elizabeth Macarthur Creek riparian corridor along its eastern edge.
 - the size and constraints of the site would not allow the legislated dwelling cap under THLEP 2019 to be properly utilised. They should be maximised as far as possible to realise the vision for the centre, stemming from the rezoning process progressed in collaboration between local and state government.
- the aim to focus higher density residential, commercial and mixed use land uses close to highly connected public transport infrastructure, consistent with the principle of transit oriented development and the vision of the precinct to foster higher patronage of sustainable transportation modes.

- the sites strong connection and alignment with Elizabeth Macarthur Creek and proposed road hierarchy provides significant levels of open space, landscaping opportunities and pedestrian and cyclist connectivity that offsets the reduced front setbacks.
- providing vibrant and active street frontages for residents and workers near Bella Vista Station.

Given no built form is proposed by this application, there are no material negative amenity impacts resulting from the setback controls as a direct result of this concept SSDA. The assessment undertaken as part of the Urban Design Report demonstrates the design approach does not result in adverse amenity impacts, including the proposed building setbacks. Notwithstanding, built form impacts from the reduced setbacks under future applications would be assessed on their merits when applying the proposed design guidelines.

The concept SSDA will support a high-density transit orientated development that makes an efficient use of land, creates active street frontages and provides direct connections to pedestrian, cyclist and open space connections. The concept SSDA also proposes design guidelines that will apply to future detailed built form outcomes over the site.

Furthermore, the proposed setback controls would not be inconsistent with the intent of the Bella Vista Finalisation Report to “create more active and safer streets with less vacant spaces and more passive surveillance”.

The proposed setback controls have been established to encourage and accommodate a range of commercial, mixed use and residential typologies that allow for improved built form transitions between the town centre, residential core, local hub and adjacent Elizabeth Macarthur Creek riparian corridor. The proposed setbacks north of Balmoral Road, together with the proposed street and footpath layouts are generally consistent with Council’s suggested 3m setback control, which has been supported in other MNWL station precincts.

Relief to future built form would be accommodated within the smaller setbacks proposed and the varied verge widths proposed as part of the new local street network. Landscaped verge widths are proposed to range between 500mm to 2.5m and will afford landscape embellishment opportunities that will further assist in softening any potential future built form.

Further, the design guidelines encourage the introduction of articulation and modulation to building facades to provide relief. These relief spaces will afford landscape embellishment opportunities and the ability to activate the public domain that will assist in softening potential future built form impacts and creating a vibrant urban environment.

Compliance with the 5m minimum building setback development standard in a locality that is constrained by existing environmental and site conditions, would unreasonably impact on the establishment of a high density urban environment and limit the ability for the concept SSDA to deliver a vibrant and activated community within the Bella Vista Station Precinct.

3.3 Is the proposed development in the public interest? (Clause 4.6(4)(a)(ii))

Initial Action v Woollahra provides that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the zone in which the development is to be carried out.

The proposed development is in the public interest because it facilitates a development that is consistent with the objectives of the standard, and the objectives of the R1 and B2 zones under THLEP 2019 despite the non-compliance with the development standard.

The manner by which the proposed development achieves the objectives of the standard is discussed above, and it therefore follows that the development is consistent with those objectives. The proposed setbacks are also considered to be consistent with the objectives of the underlying B2 and R1 land use zones. The objectives of the zones and the way in which the proposed setbacks achieve them are detailed below.

In regard to the objectives of the R1 General Residential and B2 Local Centre zones, which are:

R1 General Residential

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.*

B2 Local Centre

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling,*

the concept SSDA is consistent with the objectives of both zones for the following reasons:

R1 General Residential

- Regarding the first objective, the proposed 2m setback control does not constrain the delivery of more housing.
- Regarding the second objective, the proposed setback control would provide increased opportunities for varied housing types and forms, however this would be a matter for future DAs. The setbacks would not adversely impact the 5% Affordable Housing target proposed across both the Bella Vista and Kellyville Station Precincts.

- Regarding the third objective, the proposed setback control would allow increased opportunities to support facilities and services across the station precinct, however this would be a matter for future DAs. The proposed setbacks seek to encourage active public domain interfaces that in turn contribute to the creation of a vibrant, transit oriented community.
- Regarding the fourth objective, the proposed setback control is consistent throughout the proposed development blocks and reflect the three distinct character areas of the site and would not result in any adverse amenity impacts for nearby residential areas.

B2 Local Centre

- Regarding the first objective, the proposed 2m setback control will not inhibit the delivery of a wide range of retail, business and entertainment facilities and would promote active interfaces for these future uses that would be confirmed as part of future DAs.
- Regarding the second objective, the proposed setback control in the B2 zone will not compromise the ability to provide employment opportunities and uses in a location that is close to Bella Vista Station and nearby business uses.
- Regarding the third objective, the proposed setback control will support the maximisation of public transport patronage and encourage walking and cycling as it:
 - will encourage the establishment of active street frontages in the Bella Vista Station Precinct which has been identified as a high-density transit oriented urban environment
 - maximise the creation of a vibrant and active precinct which in turn will encourage movement and activity within the local street network
 - support the establishment of safe and active public domain environments that promotes the creation of an active and well connected precinct that supports walking and cycling.

The proposed setback control is therefore considered to be consistent with the objectives of the R1 and B2 land uses zones and are in the public interest as they will:

- Facilitate the urban renewal of Government owned land in a coordinated manner that is consistent with the urban planning outcomes identified in the North West Rail Link Corridor Strategy prepared by the then Department of Planning and Transport for NSW.
- Provide a high density transit oriented development outcome that will provide additional commercial, business and residential built form in a location which reinforces the 30-minute city concept proposed by the Greater Sydney Commission, locating dwellings and employment in a location which is close to services, open space, transport and jobs.
- Afford the opportunity to establish a unique planning framework that does not adversely impact on the existing built environment between Old Windsor Road, Bella Vista station and the MNWL network and Elizabeth Macarthur Creek. The site has been planned for and can accommodate increased built form densities and land use activities that will be appropriately

controlled by the proposed design guidelines to ensure potential impacts on the surrounding environment are minimised.

- Encourage varied urban form outcomes at the street level along existing and future local roads that would provide additional residential capacity (including Affordable Housing) near a new metro station, ensuring that jobs and dwellings are collocated in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space.
- Deliver high quality building forms that achieves a high level of amenity for future occupants whilst not detrimentally impacting on identified public domain and open space areas.
- Provide a framework that will ensure future development exhibits design excellence, working alongside the metro station to deliver high quality built form outcomes.

3.4 Consideration of concurrence by Secretary (Clause 4.6(4)(b)&(5))

Pursuant to the exclusion provided for State Significance Development by section 4.13(2A) of the EP&A Act, the concurrence of the Secretary of DPIE is not required prior to the consent authority granting development consent.

Despite this and for the reasons set out above in this application, the Secretary of DPIE can be satisfied that the proposed variation to the building setback controls is not considered to be detrimental to any matters of significance for State or Regional environmental planning.

4 Conclusion

Compliance with the setback development standard stipulated in subclauses 8.4(a) and (b) of THLEP 2019 is unreasonable in the circumstances of this application, and the justification to vary the development standard of merit. The proposed variation to the setback development standard and introduction of a reduced 2m setback control for development in the R1 and B2 zones will allow for the establishment of a vibrant and active station precinct, and provide for an improved planning outcome for the Bella Vista Station Precinct SSD site.

This clause 4.6 variation request demonstrates that:

- the underlying objectives of the setback development standard are achieved notwithstanding the proposed variation
- pre-existing environmental and site constraints restrict the concept SSDA's ability to achieving the project vision for the Bella Vista Station Precinct
- the proposed flexible application of the development standard to identified development block frontages will create a better planning outcome than that which would be achieved by ensuring strict compliance with the 5m minimum building setback
- it is in the public interest as the concept SSDA achieves the underlying objectives of the standard and is consistent with the objectives of the R1 General Residential and B2 Local Centre land use zones under THLEP 2019
- the concept SSDA proposes robust design guidelines that will satisfactorily guide future development within the station precinct to ensure a vibrant, convenient and walkable local centre around the station is achieved
- the non-compliance with the 5m minimum building setback development standard is site specific and does not raise any matters of State and regional planning significance
- there is no public benefit that could otherwise be satisfied by ensuring compliance with the development standard outlined in subclause 8.4(a) and (b) of THLEP 2019.

This variation request outlines the justification for the proposed contravention to the minimum building setback development standard and demonstrates that it is in the public interest. While the SSD application does not involve the construction of any built form, this clause 4.6 variation request has been prepared for abundant caution as the application seeks approval for design guidelines that will inform future development across the Bella Vista Station Precinct SSD site.