

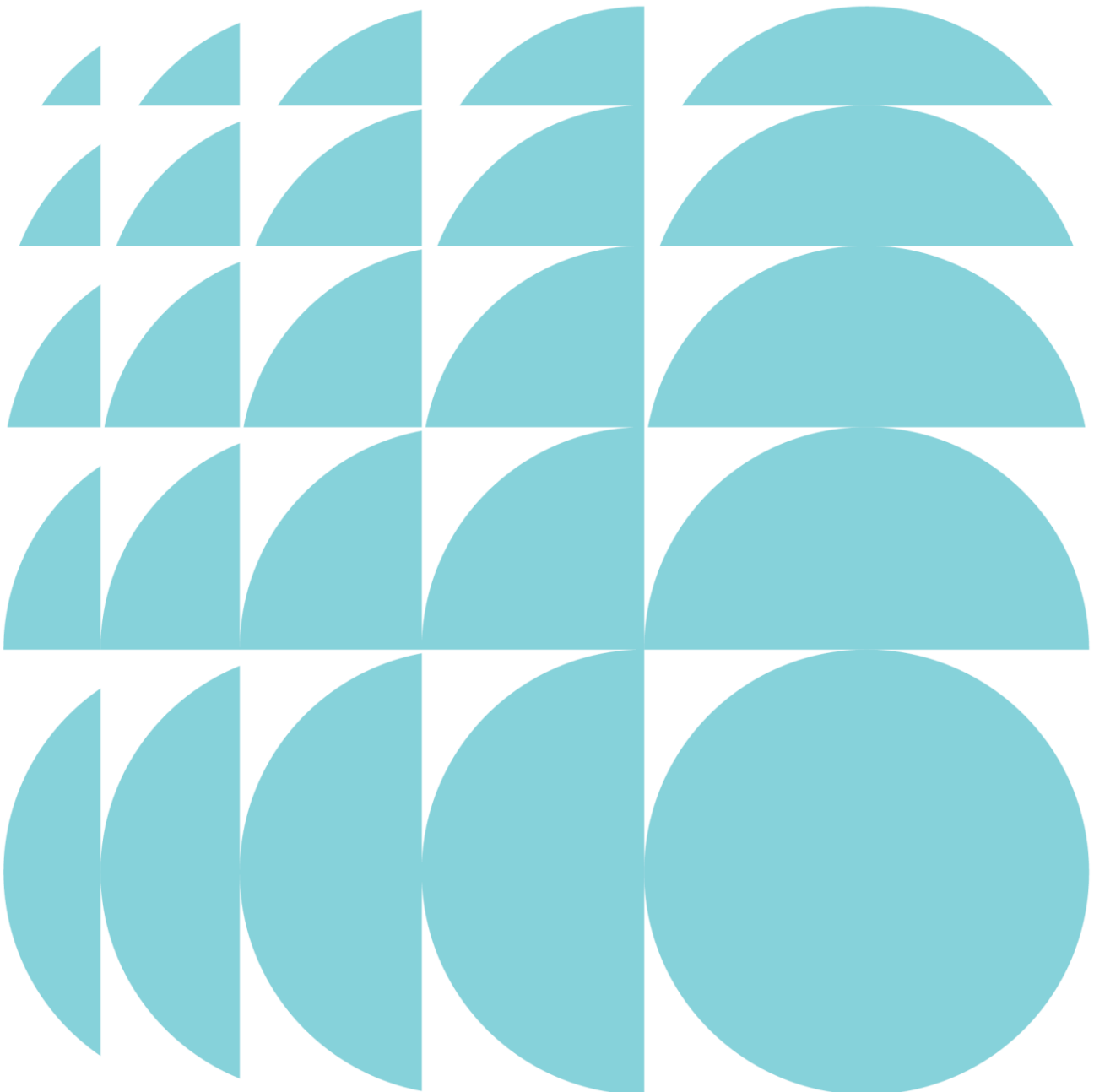
Clause 4.6 Variation Request - Height of Buildings

Stage 2 ('Midtown') of the Ivanhoe Estate,
Macquarie Park (SSD-15822622)

Submitted to Department of Planning, Industry
and Environment

On behalf of NSW Land and Housing Corporation

05 August 2021 | 17156



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Appendices

The following documents are reproductions of the appendices submitted with the Environmental Impact Statement dated August 2021, and are relevant for this variation request:

Contents

- C2, C3 and C4 Plans & Design Reports
Fox Johnston & COX Architecture & CHROFI & McGregor Coxall & Hassell
- Visual Impact Assessment
Ethos Urban & Virtual Ideas
- Sustainability Assessments
Frasers Property Australia & Integral Group
- Aboriginal Cultural Heritage Assessment Report
Urbis
- Wind Impact Assessment
SLR
- Reflectivity Assessment
RWDI
- Connecting with Country Strategy
Frasers Property Australia & The Fulcrum Agency
- Transport Assessment, incl. Preliminary Construction Traffic Management Plan, Green Travel Plan
Ason Group
- Consultation Outcomes Report
Elton Consulting

1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of NSW Land and Housing Corporation (LAHC) and Frasers Property Australia (FPA). It is submitted to the Department of Planning, Industry and Environment (DPIE) in support of a State Significant Development (SSD-15822622) application for the detailed design and delivery of Stage 2 of the Ivanhoe Estate Masterplan, otherwise referred to as 'Midtown'. Stage 2, comprises the detailed design, construction, and operation of buildings C2, C3, and C4 including landscaped areas, the delivery of the new public open space area referred to as the 'Village Green', and enabling works such as earthworks, servicing, and new driveways.

This DA is pursuant to the approved Ivanhoe Estate Concept Masterplan (SSD-8707) and follows the approved Stage 1 works (SSD-8903). It is a staged application in the meaning of Division 4.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). In this respect, the detailed buildings proposed in this SSD application are consistent with the building heights that were established by the approved building envelopes as part of the Masterplan. This Clause 4.6 variation request does not seek to amend these approved building heights.

Accordingly, the purpose of this Clause 4.6 Variation Request is to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls in the Ryde LEP and to enable this next staged DA to be granted consent where it contravenes the applicable development standard. This variation request is administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

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

This Clause 4.6 variation request relates to the development standard for the height of buildings under Clause 4.3 of the Ryde LEP and should be read in conjunction with the Environmental Impact Statement prepared by Ethos Urban dated August 2021.

This Clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard. This Clause 4.6 variation request demonstrates that:

- Buildings C3 and C4 have been designed to comply with the maximum building heights approved under the Ivanhoe Estate Masterplan (SSD-8707), to which this SSD application is pursuant. Accordingly, this SSD application does not seek to vary what has already been approved in this previous application.
- The development will continue to achieve the objectives of the land use zone and the maximum height of buildings development standard contained in Clause 4.3 of the Ryde LEP.
- The proposed development remains in the public interest notwithstanding the proposed variation to the development standard.
- The proposed development does not result in any adverse environmental impacts as a result of the variation to the maximum building height.

This Clause 4.6 variation request demonstrates that compliance with the maximum building height development standard is unreasonable and unnecessary in this circumstance and that there are sufficient environmental planning grounds to justify the proposed variation to the mapped maximum building height, consistent with the approved Masterplan.

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

2.0 Clause 4.6 Variation Requests

Assistance on the approach to considering a contravention to a development standard has been taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
5. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
6. *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130,

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

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

3.0 Development Standard to be Varied

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Clause 4.3 of the Ryde LEP. Under the LEP, the Stage 2 site is mapped as having a maximum building height of 45m and 65m that bisects the site.

Clause 4.3 of the Ryde LEP is reproduced below in its entirety and an extract of the Height of Buildings Map, to which that clause applies, is reproduced in **Figure 1** below.

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

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

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*



Figure 1 Height of Buildings Map and approximate locations of the Stage 2 blocks (dotted)

Source: Ryde LEP / Ethos Urban

3.1 Land subject to this Clause 4.6 Variation Request

The Ivanhoe Estate is legally described as Lot 100 in Deposited Plan 1262209. This Clause 4.6 Variation Request applies only to part of this lot, with the Stage 2 land entirely located within the Estate. The proposal does not directly interface with neighbouring landowners, and will be bordered by other multistorey development being delivered as part of the Estate to the north, east and west. To the south is Shrimptons Creek and on the southern side of this creek are commercial and light industrial uses.

The greater Ivanhoe Estate site forms part of the Macquarie Park corridor and is located within the Herring Road Precinct, which forms part of the broader Macquarie Park corridor. The Precinct is characterised by a mix of new high density residential uses, older low scale residential flat buildings, the Macquarie Shopping Centre, and Macquarie University.

Strategic planning for the area has identified Macquarie Park as an urban renewal area with the Herring Road Precinct focussed on the walking catchment around Macquarie University Railway Station and along Herring Road, being those areas predominantly zoned B4 Mixed Use under Ryde LEP. In 2015, this area was the subject of amendments to the Ryde LEP to increase the height and density controls, particularly around the station and major road intersection approaches to the Herring Road Precinct.

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

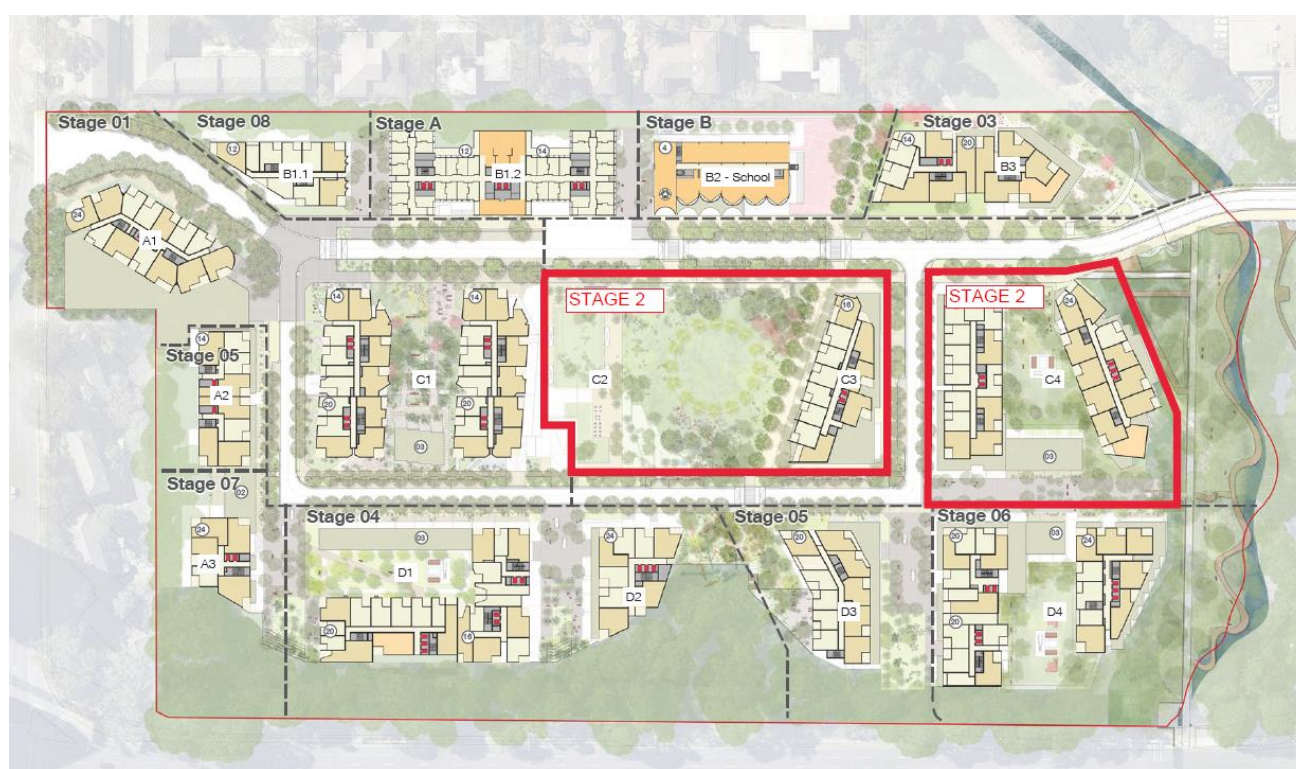


Figure 2 Ivanhoe Concept Masterplan staging plan, with the Stage 2 area highlighted

Source: Bates Smart, edits by Ethos Urban

3.2 Masterplan (Concept) Approval

Consent was granted by the Minister for Planning and Public Spaces on 30 April 2020 for the Ivanhoe Estate Concept Masterplan (SSD-8707), which established the overall planning and assessment framework for the staged redevelopment of the Ivanhoe Estate. The proposed Stage 2 development is, therefore, pursuant to this approved Masterplan and cannot be inconsistent with the terms of this Masterplan in accordance with Section 4.24 of the EP&A Act.

Relevant to this request, the Masterplan assessed and approved building envelopes for each development block within the Estate, which has determined the height of each future building. Therefore, the Masterplan consent has already in effect approved the height of Buildings C2, C3 and C4 which are being delivered in this Stage 2 application.

The purpose of this Clause 4.6 Variation Request is consequently to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls and to enable this next staged DA to be granted consent where it contravenes the development standard. This variation request is administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

DPIE's assessment of the proposed concept redevelopment of the Estate concluded that the Masterplan is of an appropriate density and scale that is consistent with the evolving character of the area. In addition, the future design and built form would be compatible with the broader Herring Road Priority Precinct which is transitioning to high density, tower development, consistent with the strategic objectives for the area.

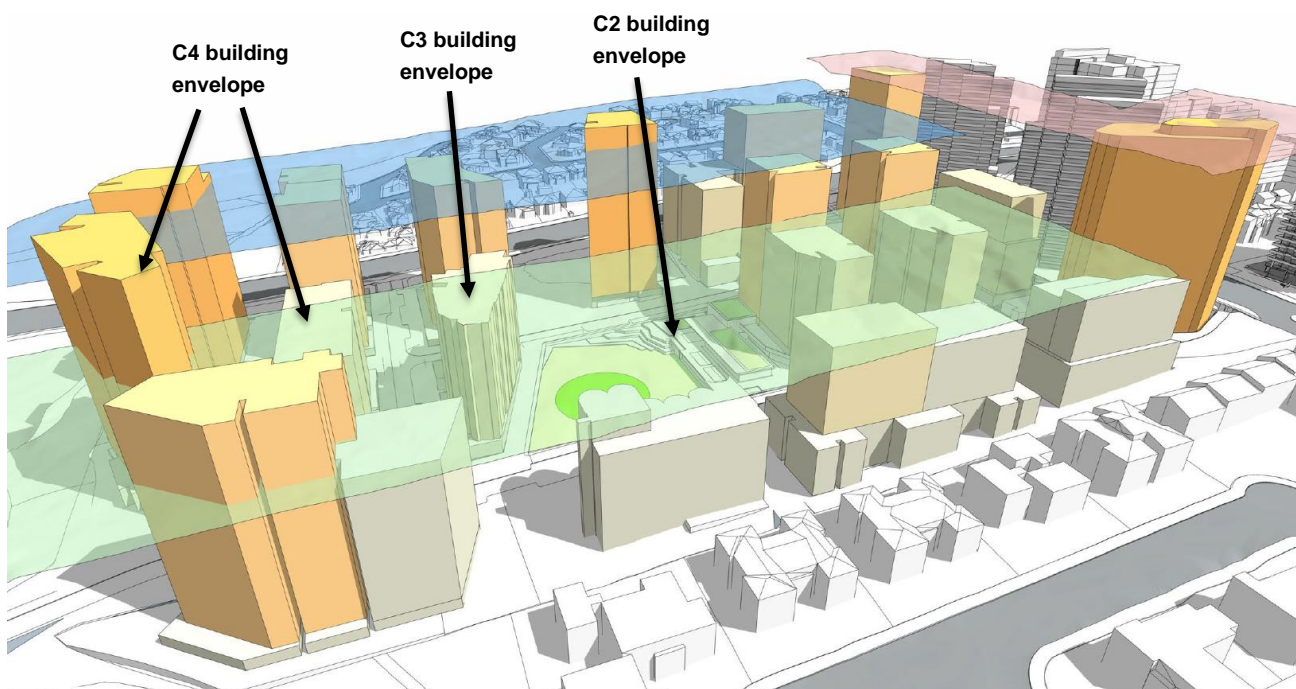


Figure 3 Masterplan indicative buildings and their interface with mapped height planes under the Ryde LEP

Source: Bates Smart as part of the Concept Masterplan DA (SSD-8707)

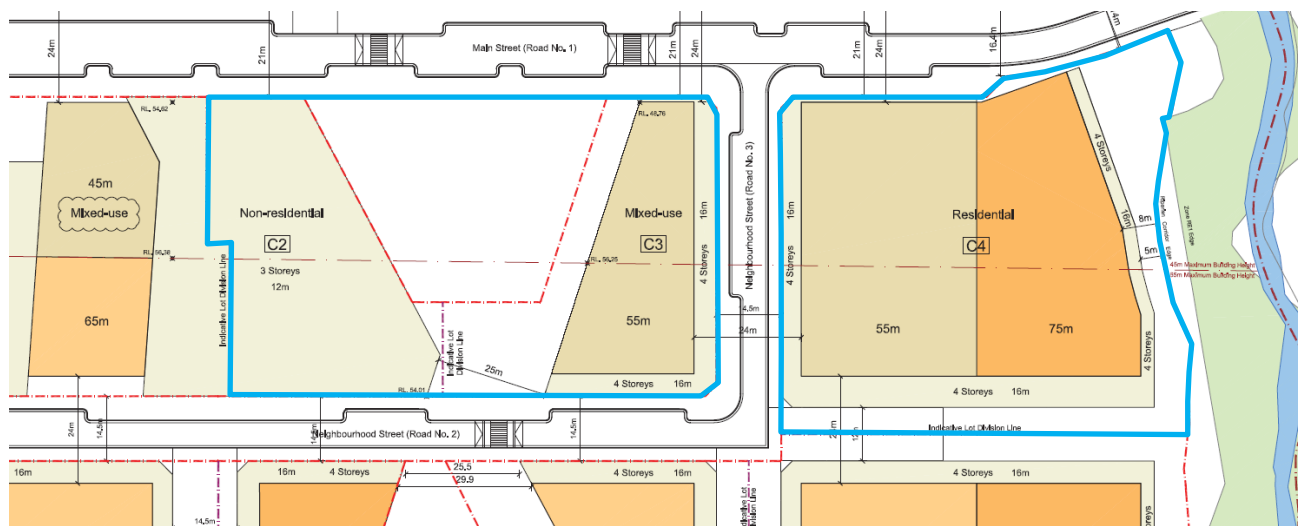


Figure 4 Extract of stamped plan showing the approved height of the building envelopes for C2, C3 and C4 with the Stage 2 areas (outlined in blue)

Source: Bates Smart / Ethos Urban

3.3 Nature of the variation

This variation request specifically pertains to the following components of the Stage 2 development:

- Upper floors of Building C4's southern tower and rooftop plant and services. These floors are contained within the approved building envelope, but will extend 30.8m above the area that is mapped for a 45m building height control and 10.4m above the area that is mapped for a 65m building height control under the Ryde LEP (see **Figure 5** below).
- The eastern half of Building C3's upper floors and rooftop plant and services. These floors are also contained within the approved building envelope, but will extend 10m above the area that is mapped for a 45m building height (see **Figure 6** below).

Building C2 is entirely within the mapped building heights applying to the site.

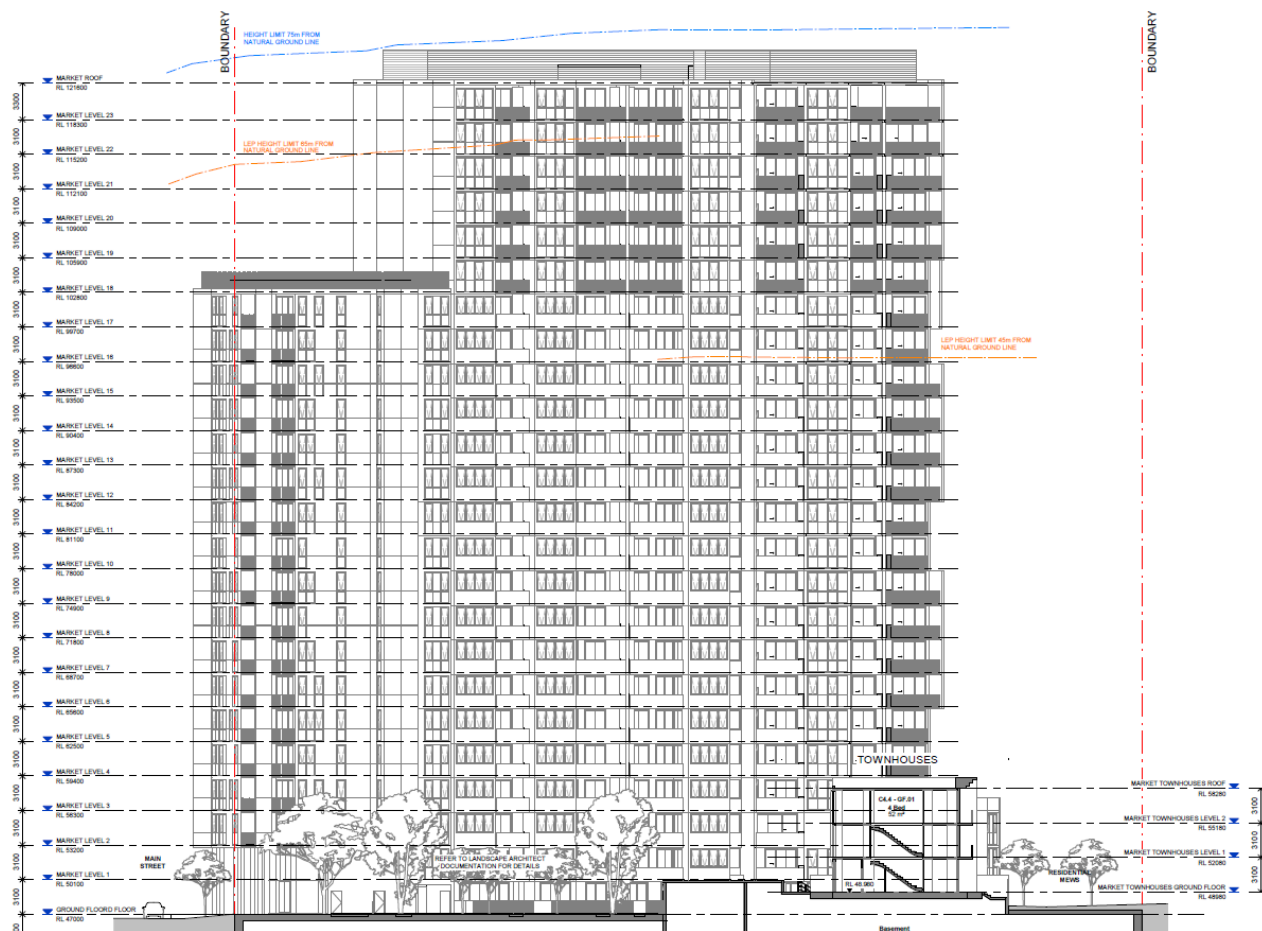


Figure 5 Placeholder – section of C4 showing mapped building height lines (orange)

Source: COX Architecture

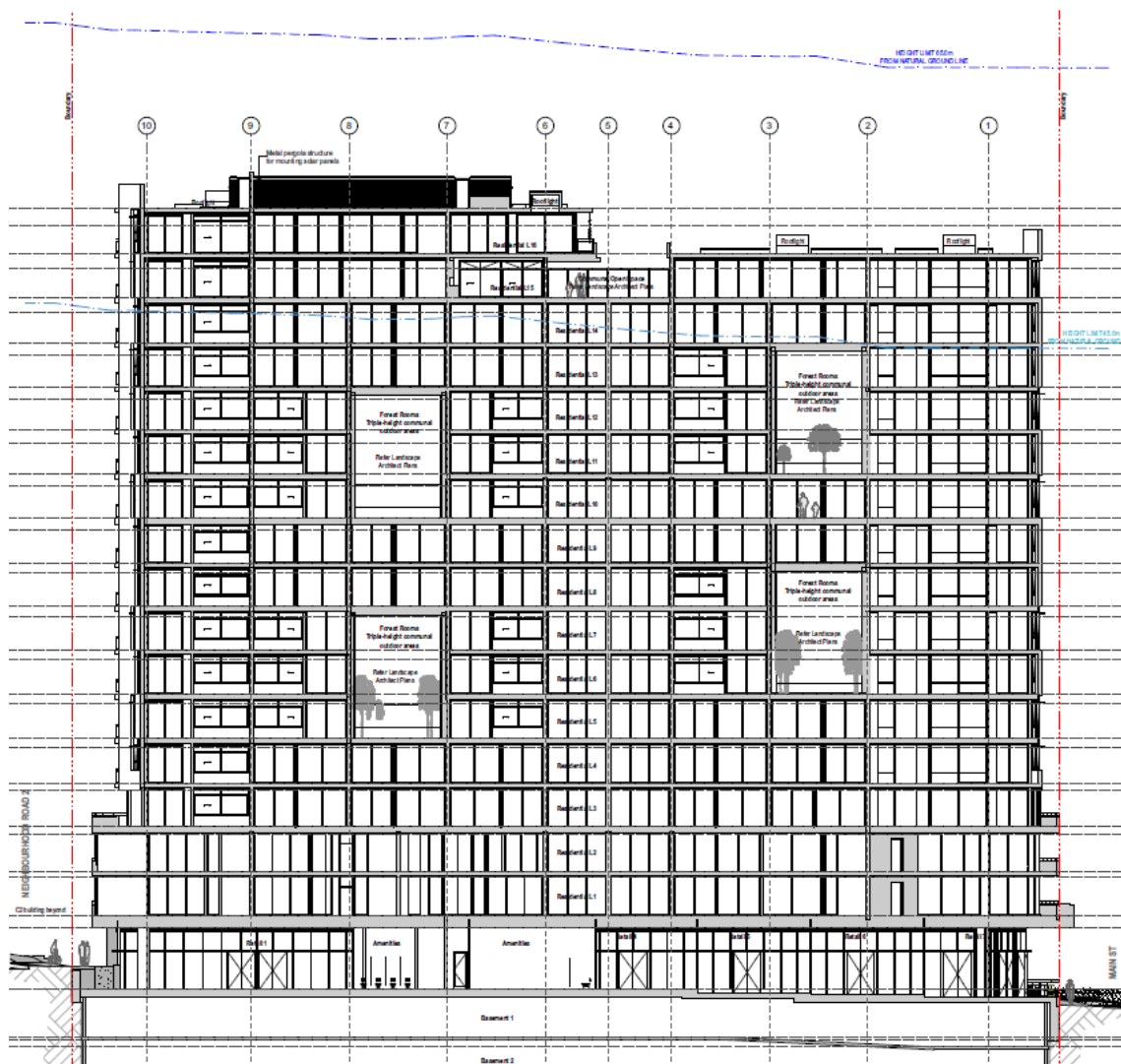


Figure 6 Placeholder – section of C3 showing mapped building height lines (blue)

Source: Fox Johnston

4.0 Justification for Contravention of the Development Standard

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

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

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

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

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).

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

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the First Method and also to a degree the Fourth Method as the proposal has been designed to comply with the approved building heights set under the Masterplan which already contravenes the development standard.

4.1.1 First Method: the objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the development standard contained in Clause 4.3 of the Ryde LEP are as follows:

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

As explored in the sections below, the proposed development will achieve these development standards notwithstanding the proposed variations to the maximum building heights.

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

The proposed C3 and C4 buildings are contained within the approved Ivanhoe Estate redevelopment site, and as such have been designed to be in accordance with the approved building envelopes and endorsed Design Guidelines. As detailed in the Architectural Plans and Design Reports provided at **Appendix B** of the EIS, the proposed C3 and C4 buildings adopt a two (2) to four (4) storey street frontage consistent with the scale of development envisaged for the Estate in the Masterplan. A range of design features have also been incorporated into the building design to establish a human-scale including providing pedestrian awnings, upper level building setbacks, and employing different materials and finishes to visually demarcate the podiums, and providing individual ground floor entrances for retail tenancies and residents for a more fine-grain and active treatment of the street frontages.

The two (2) to four (4) storey scale at the street edges will contribute to an active streetscape and achieve a human scale for pedestrians. This street scale is in keeping with the character of the developing Ivanhoe Estate, within which all of the Stage 2 buildings are contained.

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

Overshadowing plans have been prepared by the architects and are provided with the Architectural Plans at **Appendix B** of the EIS. These plans demonstrate that the proposed buildings are generally consistent with the extent of overshadowing assessed and approved as part of the Masterplan, recognising a degree of design development has occurred for the Stage 2 buildings.

The overshadowing plans demonstrate that of those shadows occurring outside of the Estate, these will generally fall on Epping Road and the surplus land on the opposite side of Epping Road, Shrimptons Creek, and the commercial building at 2-4 Lyonpark Road. The only affected residential properties outside of the Estate are those on the other side of Epping Road. These properties will receive at least 2 hours solar access to at least 50% of the private open space area between 9am and 3pm on 21 June as required by the Ryde DCP.

Within the Estate, the C3 and C4 buildings have been assessed against the principles of the Apartment Design Guide demonstrating that these buildings achieve appropriate amenity in accordance with what was assessed and deemed appropriate under the Masterplan. The variable, stepped building heights for C3 and C4 serve to improve solar access through enabling the upper floors of each building improved access to daylight.

Objective (c): to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,

The Ivanhoe Estate is located within the centre of the Macquarie Park Corridor as identified on the Ryde LEP's Centres Map. The Estate comprises a large consolidated landholding currently owned by LAHC that is approved to be developed in its entirety as a mixed-use development incorporating social, affordable and private dwellings in addition to a school, aged care facilities, community, childcare, office and retail uses. The redevelopment of the Estate utilises key public transport infrastructure and is considered to encourage a sustainable development pattern that does not adversely impact upon the orderly development of adjoining land.

This Stage 2 SSD application represents the next step in the delivery of this approved vision, including achieving the following:

- Providing diverse housing typologies that will benefit from close proximity to Macquarie University Station. The site will also be highly accessible to a dedicated bus lane proposed on Herring Road as part of Stage 2 of the Macquarie Park Bus Priority and Capacity Improvements being investigated by Transport for NSW (RMS). The proposed development aligns with the principal objectives for transport orientated development and is well serviced by existing and proposed transport infrastructure.
- The site's size, locational characteristics and proposed uses make it a prime example of development that achieves the '30-minute city' concept in the North District Plan. It is located in close proximity to existing public open space, essential services, employment areas, and facilities that will service residents.
- A key outcome of the redevelopment of the Estate is also to deliver a more sustainable community than was previously provided, in-line with Fraser's standing as the foremost provider of Green Star communities in Australia. The proposed development will achieve the sustainability benchmarks established under the Masterplan as confirmed in the Sustainability Assessment provided at **Appendix N** of the EIS. These include a 5 Star Green Star Design & As Built v1.1, 6 Stars NatHERS commitment with 7 stars aspiration, sustainable transport options, and the use of a 'Real Utilities' integrated infrastructure solution. The Estate as a whole is also targeted to achieve 6-star Green Star Communities v1.1 and precinct-wide averaged Basix 45 Energy and 45 Water targets.

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

The proposed development, including the proposed variation to the mapped height limits, will not result in any significant or adverse additional environmental impacts beyond what has been assessed and approved as part of the Masterplan. In this respect, DPIE's assessment of the Masterplan confirmed that *"although five buildings would exceed the RLEP 2014 height controls, the Department considers these buildings are located in areas of the site that would not increase any impacts or overshadowing of neighbouring residential properties beyond a fully complying form."*

An assessment of the potential impacts on the amenity of surrounding properties confirms the following:

- Wind: a Wind Impact Assessment has been prepared by SLR to assess the wind environment created by the proposed development, and is provided at **Appendix T** of the EIS. The assessment confirms that the environmental wind conditions at ground level are expected to meet the comfort criteria for pedestrian standing and walking, pass the safety criterion, and will be consistent with the DCP criteria for intended purpose. The proposed variation to the height controls, therefore, will not impact the wind conditions and the amenity of surrounding areas within the Estate or other surrounding properties.

- **Visual and view impact:** visualisations prepared by Virtual Ideas accompany the EIS at **Appendix S**. These visualisations provide updated visual assessments of the buildings within the building envelopes approved for C2, C3 and C4 that were considered and assessed under the Visual Impact Assessment prepared by Ethos Urban that accompanied the Masterplan application. The degree of impact is considered to be acceptable as the proposed buildings sit comfortably within the Masterplan building envelopes and have adopted a number of design measures to mitigate perceptions of bulk. Given the topography of the Estate which falls towards Shrimptons Creek, Buildings C3 and C4 that exceed the mapped height limits will not be visible above Buildings A1 and A3 that comply with the height limit, which means there is no change what is otherwise envisaged for the scale of buildings in this area and the views through the Estate (see **Figure 7** below).
- **Overshadowing:** overshadowing plans are provided with the Architectural Plans at **Appendix B** of the EIS. As discussed in relation to Objective (B) above, these plans demonstrate that the proposed building heights for C3 and C4 will not result in adverse impacts to the amenity of surrounding residential properties external to the site.
- **Reflectivity:** a Reflectivity Report accompanies the EIS at **Appendix BB** and confirms that the proposed C3 and C4 buildings may be partially visible from the surrounding road network but have a low potential for glare, will not create significant additional heat loads on adjacent buildings or surrounding areas, and will not cause adverse solar reflections. The proposed buildings, therefore, do not impact on the amenity of surrounding development or the safety of the surrounding road network.
- **Transport, access and parking:** the capacity of the proposed Stage 2 buildings is consistent with capacity that was assumed for these sites and assessed under the Masterplan. Accordingly, the proposed height and therefore capacity of Buildings C3 and C4 does not impact the operation of the surrounding road network or the approved intersection upgrades and internal road network that is being delivered as part of the approved Stage 1 DA. As confirmed in the Transport Assessment provided at **Appendix P** of the EIS, the proposed Stage 2 buildings will not generate additional traffic than that previously assessed and can be adequately serviced in terms of achieving the endorsed carparking rates, bicycle parking rates, and servicing requirements.

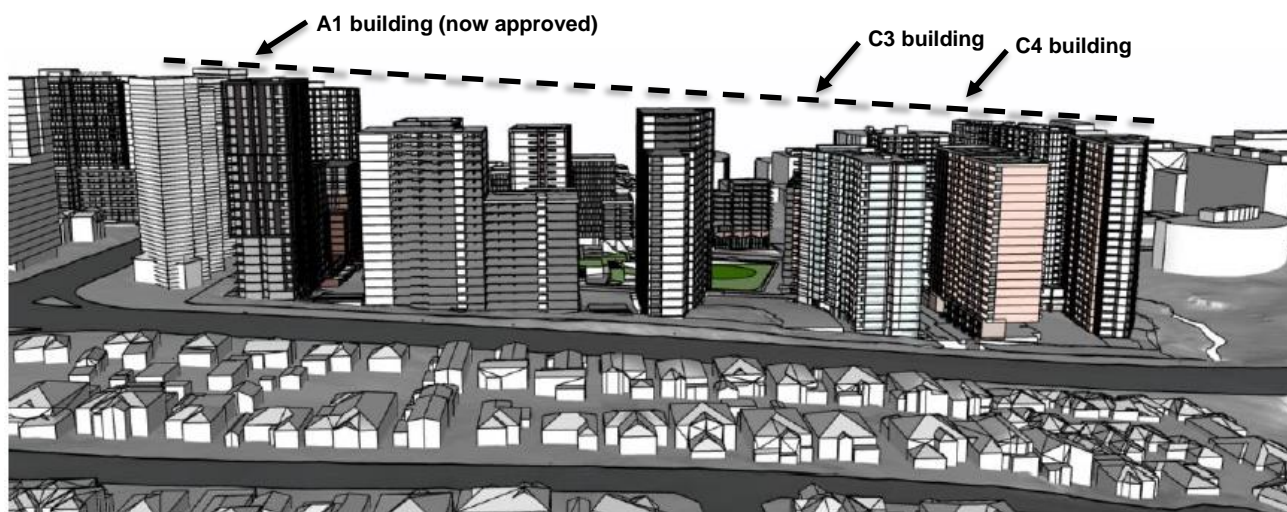


Figure 7 Composition of indicative buildings showing that C3 and C4 do not step above the height of A1 located on the ridgeline (looking east through Epping Road)

Source: Bates Smart

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

The proposed development is entirely located within the Ivanhoe Estate, and as such it does not directly interface with any existing public road frontages or corridors. Notwithstanding this, the proposed development has been designed to align with the Masterplan building envelopes and Design Guidelines, which have informed the development's relationship to the future road network and surrounding areas. In this instance, the proposed buildings comply with the intended building setbacks to Main Street and the Neighbourhood Streets, providing a consistent built form treatment to these future roads.

The proposed buildings also do not impact the significant landscaped setback to Epping Road, which will preserve existing vegetation and the tree canopy as part of the Sydney Turpentine Ironbark Forest, and the future bridge connection over Shrimptons Creek that is approved to be delivered as part of the Stage 1 works.

The proposed variation to building heights, consistent with the Masterplan, therefore, does not impact the development's built-form relationship to existing or future roads.

4.1.2 Fourth Method: the development standard has been virtually abandoned or destroyed in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

While this Clause 4.6 Variation Request is primarily made in relation to the First Method, the Fourth Method also applies as consent was granted to the Masterplan that departs from the standard, and as such compliance with the standard at this subsequent detailed phase would be unreasonable and unnecessary. As discussed in **Section 3.2** of this report, the proposed development is pursuant to the approved Masterplan which determined the height of each future building and hence has already granted consent to C3 and C4 exceeding the Ryde LEP mapped height limits.

The purpose of this Clause 4.6 Variation Request is consequently to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls and to enable this next staged DA to be granted consent where it contravenes the development standard. This variation request is administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

DPIE's assessment of the proposed concept redevelopment of the Estate concluded that the Masterplan is of an appropriate density and scale that is consistent with the evolving character of the area. In addition, the future design and built form would be compatible with the broader Herring Road Priority Precinct which is transitioning to high density, tower development, consistent with the strategic objectives for the area. The proposed development remains consistent with the envisaged scale of development in the Estate.

4.1.3 Conclusion on Clause 4.6(3)(a)

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

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
4. *the development standard has been virtually abandoned or destroyed in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*

As detailed in the sections above, this detailed SSD application satisfies the building height objectives notwithstanding the proposed variation. It will facilitate development that will continue to achieve the objectives of the standard and will not cause undue environmental impact, including any significant new or adverse impacts beyond those that were assessed and approved at the Masterplan stage. As the objectives of the development standard are met notwithstanding the breach, the first method is satisfied.

Further, the variation is consistent with the scale of development that is approved under the Masterplan. Accordingly, compliance with the Ryde LEP mapped height limits in this instance would result in a built form that is inconsistent with the Masterplan to which this DA is pursuant and would be unnecessary and unreasonable.

Having regard to the above, in our view it would be unreasonable and unnecessary to enforce strict compliance with the maximum building height development standard contained within Clause 4.3 of the Ryde LEP.

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

The proposed development remains consistent with the environmental planning grounds identified under the Masterplan for the requirement to breach the mapped building height limits applying to the site. This subsequent detailed SSD application represents the next stage in the delivery of this vision, and does not seek to change any of the approved built form outcomes for the Estate.

Detailed design testing was undertaken at the Masterplan stage that revealed that rather than complying with the mapped building heights across the Estate, a better outcome could be achieved by redistributing building mass to Buildings B3, C4 and D4 adjacent to Shrimptons Creek, Building D2 adjacent to Epping Road, and to Buildings C3 and C4.2 located internally to the south of the Village Green. As a result of the redistribution of building mass, these buildings would exceed the maximum building height limit but would provide an improved environmental planning outcome. This is because:

- Building heights are stepped to provide a clear and distinct hierarchy of buildings, with the tallest buildings located to the north-east of the site in proximity to Herring Road.
- Providing enhanced building envelopes and footprints that promote enhanced open space, tree retention, preservation of ecological communities, building separation and solar access. This includes providing the Village Green as the principal public open space area and retaining an additional 179 trees.
- Increasing the setback requirement of 10m to Epping Road, with buildings ranging from 12 to 43m, and increasing the setback requirement to the Shrimptons Creek Riparian Corridor of at least 5m and an enlarged buffer that exceeds 10m.
- Designing to address the topography of the land, which falls towards Shrimptons Creek, ensuring that Buildings C3 and C4 that exceed the mapped height limits do not extend beyond the height of Buildings A1 and A3 that comply with the height limit. Accordingly, the heights of these buildings respond to the topography of the site and does not result in a change to the height profile of development in this area.

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

Table 1 Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	<p>The proposed development represents the next stage in the delivery of the vision established under the Masterplan, which was driven by the need to renew and provide additional social housing on the site whilst also contributing to the stock of affordable housing, seniors housing and market housing. The proposed variation to the mapped building heights facilitates maximising the provision of social and affordable housing on the site, which provides a public benefit of State significance. Adherence to the development standards in this instance would require removing the upper floors of Buildings C4 and C3, compromising the delivery of integrated social and market housing with better social outcomes.</p> <p>Further, as has been addressed in the EIS and the supporting documents, the proposed development has been designed to achieve a high standard of sustainability consistent with the targets set under the Masterplan. The proposal demonstrates the proper management and conservation of resources, both through sustainable design and through the efficient use of LAHC land.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>A key outcome of the redevelopment of the Estate is also to deliver a more sustainable community than was previously provided, in-line with Fraser's standing as the foremost provider of Green Star communities in Australia. The proposed development will achieve the sustainability benchmarks established under the Masterplan as confirmed in the Sustainability Assessment provided at Appendix N of the EIS. These include a 5 Star Green Star Design & As Built v1.1, 6 Stars NatHERS commitment with 7 stars aspiration, sustainable transport options, and the use of a 'Real Utilities' integrated infrastructure solution. The Estate as a whole is also targeted to achieve 6-star Green Star Communities v1.1 and precinct-wide averaged Basix 45 Energy and 45 Water targets.</p>

Object	Comment
(c) to promote the orderly and economic use and development of land	The proposed development will promote the orderly and economic use of land by delivering detailed buildings within the approved C2, C3 and C4 building envelopes and following the approved Stage 1 works which will establish the site for these future buildings including the road network, services, and public domain areas.
(d) to promote the delivery and maintenance of affordable housing	The proposed variation to the mapped height limits directly promotes the delivery of social housing that is integrated with market housing, to offset the cost of delivering new social housing and to provide well-integrated communities.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The approved Masterplan incorporated biodiversity offset measures, tree protection, and replacement planting to conserve the natural environment. This subsequent detailed SSD application remains consistent with this strategy, and proposes planting significant trees in the Village Green and public domain areas that contribute to the commitment to plant 950 replacement trees to benefit the urban tree canopy.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	<p>The proposed development is accompanied by an Aboriginal Cultural Heritage Assessment Report (Appendix I of the EIS), and has been assessed with regard to Connecting with Country (Appendix CC). In this respect, the proposal has been designed to identify and protect or manage Aboriginal cultural heritage.</p> <p>Further, FPA will implement strategies to inform the ongoing development of aspects of the Masterplan design that have not yet been fully resolved and could benefit from discussions with Traditional Custodians and Aboriginal community groups. These areas are primarily within the public domain and include landscaping (hard and soft), land management, public art, elevational composition, and the broader public domain narrative.</p>
(g) to promote good design and amenity of the built environment	As discussed in the sections above, the proposed development including the proposed variation to the mapped height limits, will not result in any significant or adverse additional environmental impacts beyond what has been assessed and approved as part of the Masterplan. The design development of Buildings C3 and C4 has occurred in accordance with the endorsed Design Guidelines and has been subject to an internal design competition, ensuring these buildings promote good design.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed buildings and associated works have been designed to meet all relevant design and building standards, or are capable of meeting such standards as identified in the environmental assessments accompanying the EIS. This will be demonstrated further as part of the detailed design and construction phases.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to the proposed development.
(j) to provide increased opportunity for community participation in environmental planning and assessment	As detailed in the Consultation Outcomes Report at Appendix Q , consultation has been undertaken with Council and other relevant authorities, and the general public with regard to this detailed SSD application. Further opportunities for consultation will be available during the public exhibition period for this application.

4.2.1 Conclusion on Clause 4.6(3)(b)

The consent authority can be reasonably satisfied that this written request has adequately addressed the matters in Clause 4.6(3) and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance as the non-compliance with the building height control facilities a development that will provide a diverse range of housing types and supporting ancillary uses to strengthen the local community. These specific uses are critical to the future of the Ivanhoe Estate to ensure a high level of social outcomes are delivered for the community.

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

4.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the maximum height of buildings development standard, for the reasons discussed in **Section 4.1.1** of this report.

4.3.2 Consistency with objectives of the zone

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

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

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

- The proposed variation is predicated on providing a mixture of compatible land uses including a diverse range of housing typologies. The underlying reason for the proposed variation to the building height development standard is on the premise that the Masterplan will in-turn facilitate a unique mix of social, affordable, seniors and private dwellings supported by community uses. In this respect, compliance with the Ryde LEP mapped building heights would erode the ability to provide a diverse mixture of land uses, resulting in a development that would be contrary with the predominant zone objective.
- The proposed variation to the building height development standards will facilitate next stage of the orderly and economic redevelopment of the Estate, which is zoned for high density development within walking distance of the Macquarie University Station and Macquarie Shopping Centre. The proposed development will, therefore, assist in achieving the dwelling targets in the Macquarie University Station Priority Precinct.

4.3.3 Overall public interest

In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone. As discussed further in **Section 4.4.2** below, there would be a significant impact to public benefits and therefore the public interest if the development complied with the mapped height limits.

4.4 Other Matters for Consideration

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

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

These matters are addressed in detail below.

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

The proposed variation to the mapped maximum building height development standards does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, the Greater Sydney Region Plan.

The Greater Sydney Region Plan identifies that Sydney needs an estimated 4,000-8,000 additional affordable dwellings per annum to meet the needs of lower income groups. The Plan recognises that the ability to accommodate social and affordable housing will be different for each area. The Ivanhoe Estate is the only site identified in the North District Plan (NDP) for the purposes of creating an integrated community including social housing. As recognised in the NDP the subject site provides a unique opportunity to make a significant contribution to the provision of social and affordable dwellings to meet the identified demand.

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

Buildings C3 and C4 will deliver a mix of social and market housing directly contributing to the envisaged tenure-blind community, and providing essential accommodation for low income groups. Compliance with the mapped building heights would result in a reduction in such accommodation and would be inconsistent with regional environmental planning and not in the public interest as discussed in the section below.

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

Strict compliance with the mapped height of buildings development standard at this latter stage of the project would severely impede the delivery of appropriately scaled and high-quality transit orientated development and impact the delivery of the approved Masterplan as a whole. If part of 4-10 floors of the two buildings on Block C4 and the 2-3 floors of Building C3 were to be removed to comply with the Ryde LEP, this would result in significant loss of market and social housing apartments. This would also contravene the approved Masterplan which must be considered to understand the public benefit provided by the non-compliance (being increased open space, preservation of trees, preservation of critically endangered ecological community and increased riparian setbacks)

The application of the building height control would, therefore, result in a development that is unable to achieve the primary objectives for the project and ultimately represents a lost opportunity to provide a vibrant mixed tenure community. Further, as noted in the preceding sections, the additional height proposed would not give rise to any adverse environmental impacts. It is considered that there would not be any public benefit for the height of the existing building to be reduced, particularly where key planning issues deriving from height, such as privacy and overshadowing, have been resolved through architectural design.

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

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

5.0 Conclusion

The assessment above demonstrates that, consistent with the Masterplan, compliance with the maximum building height development standard contained in Clause 4.3 of the Ryde LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

Fundamentally, the purpose of this Clause 4.6 Variation Request is to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls in the Ryde LEP and to enable this next staged DA to be granted consent where it contravenes the applicable development

standard in a manner consistent with the Ivanhoe Estate Masterplan as already approved by the Minister. This variation request is therefore administrative in nature, and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

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

For the reasons set out in this written request, the Stage 2 SSD DA should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Ryde LEP.