

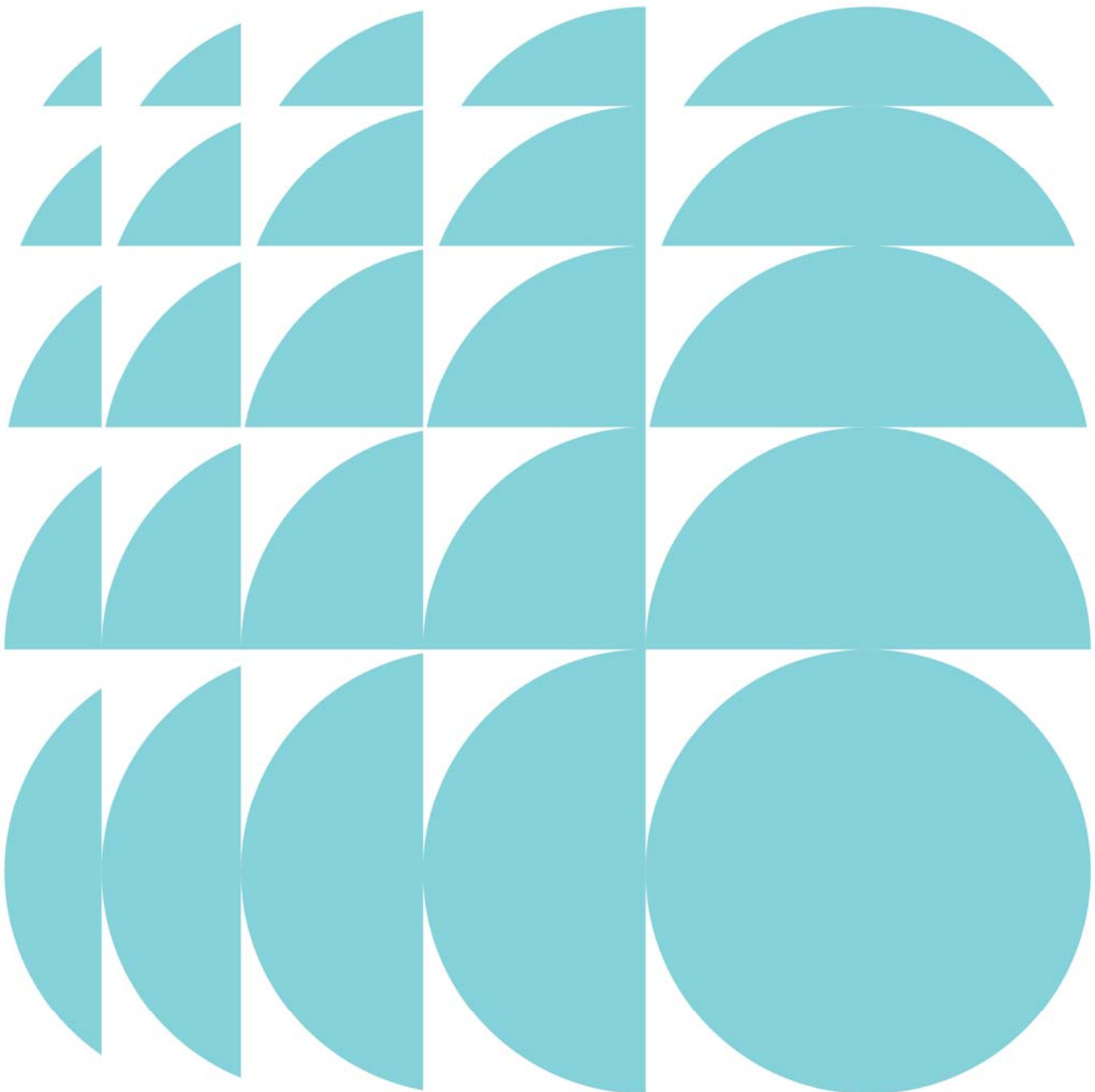
## Clause 4.6 Variation Request

Height of Buildings Development Standard

Loreto Normanhurst  
91 - 93 Pennant Hills Road, Normanhurst  
Concept Master Plan

Submitted to Department of Planning and  
Environment  
On behalf of Loreto Normanhurst

16 December 2020 | 17074



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## 1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Loreto Normanhurst. It is submitted to the Department of Planning and Environment (DPE) in support of a development application for a Concept Master Plan, State Significant Development Application (SSDA) for Loreto Normanhurst at 91 – 93 Pennant Hills Road, Normanhurst. It forms a request under Clause 4.6 of the *Hornsby Local Environmental Plan 2013* (Hornsby LEP) to vary the height of buildings development standard (Clause 4.3).

Clause 4.6 of the Hornsby LEP allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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.

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

Clause 42 of the Education SEPP permits that development consent may be granted for the purpose of a school that is State Significant Development despite the contravention of a development standard imposed by an Environmental Planning Instrument (EPI), in this case being the height of buildings standard imposed under the Hornsby LEP. Therefore, the height limit is considered unnecessary in its application to this site. Nevertheless, this Clause 4.6 variation request demonstrates that:

- The educational establishment is not required to achieve strict compliance with the height of buildings clause contained within the Hornsby LEP.
- The proposed development achieves the objectives of the height of buildings development standard because:
  - The height of the development is appropriate given the sites context and land use;
  - The height of the development does not result in a significant loss of any amenity for any adjoining residences beyond what would be considered reasonable;
  - The proposed student capacity of the site will be addressed through increased educational floor space, recreational floor space and car parking throughout the site as part of future development applications;
  - The development is sympathetic to the heritage items on and surrounding the site and will allow for the appropriate transition in height to these items;
- The proposed development is consistent with the objectives of the R2 Low Density Residential zone in providing for an upgraded facility that will assist in meeting the day to day needs of residents.
- There are sufficient environmental planning grounds for the variation to the standard including:
  - The need to meet demand for educational floor space and student spaces within Sydney and, in particular, the North District;
  - There are limited impacts on surrounding sites;
  - The building envelopes result in a reduced site coverage; and

- The flexible envelopes allow for a variety of possible forms to be considered on site and this will prove to be important in responding to the changing nature of educational establishments.
- The objectives of state and local strategic planning policies in providing additional educational floor space would be thwarted if strict compliance was required with the height of buildings development standard; and
- The proposed development is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the site.

This report requests and justifies a variation to the maximum building height as permitted by the Hornsby LEP. It has been prepared based on the Concept Plans prepared by Allen + Jack Cottier (AJC) and should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban and dated January 2019 and Response to Submissions and Amended DA prepared by Ethos Urban dated December 2020.

## 2.0 Background and Context to the Variation

### 2.1 Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. Specifically, the site is a large (13.02ha) educational campus located along Pennant Hills Road. It directly adjoins only a small number of residential dwellings that are located within the north-eastern corner of the site. The sites setting in relation to surrounding development is illustrated in **Figure 1**.

Loreto Normanhurst is an independent, Catholic day and boarding school for girls from Years 5 to 12. The existing school campus was established in 1897 and has evolved in an organic and ad-hoc manner across the span of a 120 years. A new campus wide planning approach offers the opportunity to strategically review and plan for the future in a sustainable and efficient manner such that the school's unique aesthetic and ecological values are best preserved.

The proposed Concept Masterplan articulates what the proponent is seeking to achieve for future development and sets the broad parameters for the redevelopment of the Loreto Normanhurst campus. The Concept Masterplan has an indicative delivery timeframe of 30 years, however the timeframe for delivery will ultimately be determined by the school's operational requirements, the provision of funding, community consultation and obtaining the necessary building approvals.

It is noted that the existing educational establishment already contains several buildings that exceed the 8.5 metre height control applicable to the site (as shown above the blue height plane in Error! Reference source not found.).



**Figure 1** Aerial view of Site

Source: AJC

## 2.2 Planning Context

### State Significant Development Application

The redevelopment of a school on this site is proposed as a State Significant Development Application (SSDA) in accordance with Schedule 1 of the State Environmental Planning Policy (State and Regional Development) 2011. Therefore, the Minister, or his delegate is the consent authority.

The assessment criteria for the educational establishment are provided within the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP). The Education SEPP was gazetted in 2017 in order to make more streamline for child-care providers, schools, TAFEs and Universities to build new facilities and improve existing ones by streamlining the approval process in order to deliver greater consistency across NSW. The SEPP balances the need to deliver additional educational infrastructure with a focus on good design. The SEPP is accompanied by design quality principles, which are listed under Schedule 4.

### Concept Development Application

Section 4.22 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) relates to concept development applications. A concept development application is one that sets out a concept proposal for the development of a site, and for which detailed proposals for separate components of the development or parts of the site are the subject of subsequent development applications.

The proposed concept proposal establishes the planning and development framework as the basis for the design of the future buildings, and against which to assess the future detailed, Stage 2 detailed development applications.



## 2.3 Application of Development Standards for School Development

Clause 42 of the Education SEPP states that:

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

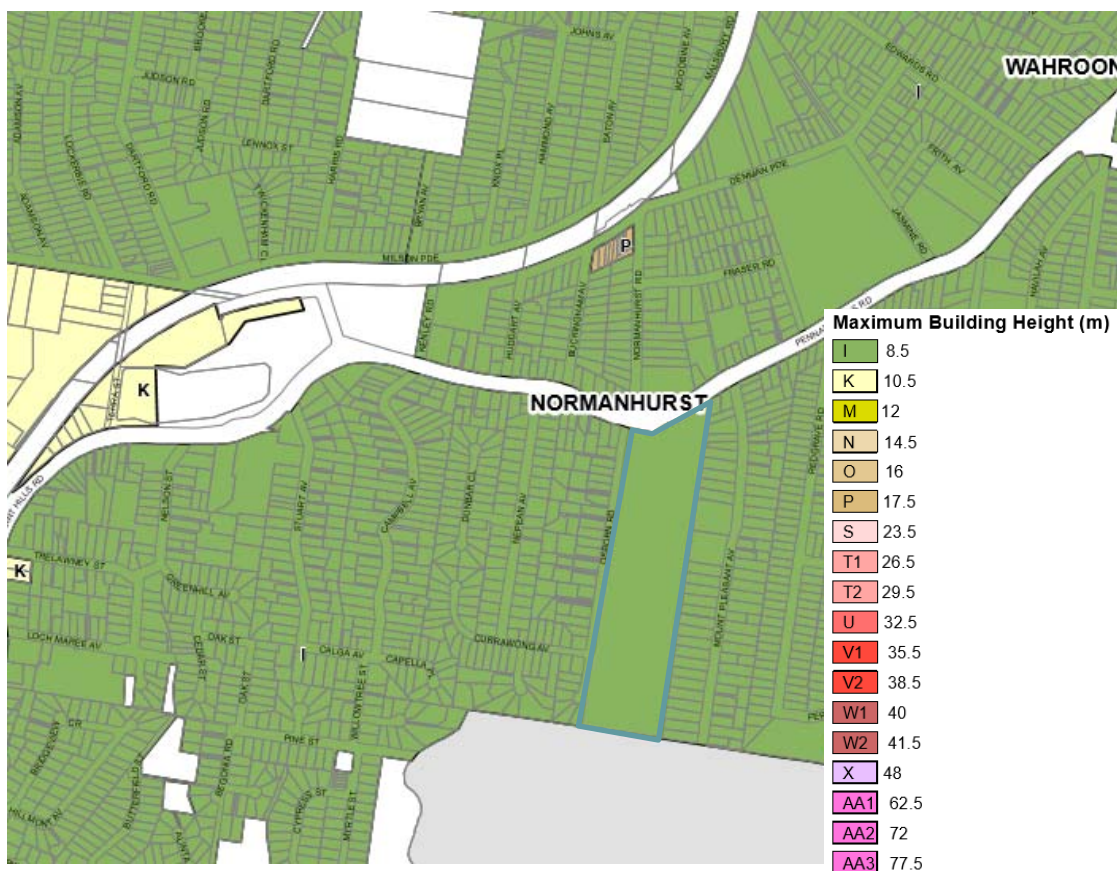
Therefore, the Education SEPP permits the contravention of any development standard, including the height of buildings standard imposed under the Hornsby LEP. It is considered that the intent of this clause seeks to meet the aims of the SEPP including improving regulatory certainty and efficiency through a consistent planning regime for educational establishments.

Despite this allowance provided by the Education SEPP, for abundant caution this Clause 4.6 request has been prepared to demonstrate how the building envelopes meet the aims and objectives of the development standard and land use zone.

## 3.0 Development Standard to be Varied

### 3.1 Development Standard to be varied

The development standard that is sought to be varied as part of this application is Clause 4.3 Height of Buildings from the Hornsby LEP. Clause 4.3 establishes the maximum building height permitted for all development. Under the Hornsby LEP, the site is afforded a maximum height of 8.5 metres across the site as shown in the excerpt of the height of buildings map shown in **Figure 2** below.



**Figure 2** Height of Buildings Map

Source: Hornsby LEP

### 3.2 Is the Planning Control in Question a Development Standard

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

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

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

The building height control under Clause 4.3 of the Hornsby LEP is clearly and unambiguously a development standard.

### 3.3 Extent and Nature of the Variation Sought

The Concept Proposal seeks approval for building envelopes up to a maximum building height of 20.6m. The building envelopes which exceed this maximum height do not occur evenly across the site, with additional height sought in a few key locations.

The extent of the variation for each building envelope is as follows:

- Building Envelope 1: 17.7 metres (108.26%)
- Building Envelope 2: 20.0 metres (235.3%)
- Building Envelope 4: 13.6 metres (60%)
- Building Envelope 5: 20.6 metres (242.4%)
- Building Envelope 6: 13.1 metres (154.1%)
- Building Envelope 7: 18.2 metres (214.1%)

Building Envelope 8, being the car park and playing fields remain within the height limit. The maximum variation sought is 20.6 metres contained within Building Envelope 5 (242.4%). The proposed building envelopes which exceed the height limit are illustrated in Error! Reference source not found..

## 4.0 Justification for Contravention of the Development Standard

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

### 4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, Clause 4.6(4)(a) of the Hornsby LEP provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*



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

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

1. *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1001;
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; and
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The relevant matters contained in Clause 4.6 of the Hornsby LEP, with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions of the Court.

#### **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 identified five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that the types of ways that it could be shown that compliance with a development standard was unreasonable or unnecessary in the circumstances of the case, was not limited to the five ways identified in *Wehbe*.

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 Hornsby 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**).

This Clause 4.6 variation request establishes that primarily compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because objectives of the standard are achieved notwithstanding the non-compliance with the standard (First Method). In addition, as a secondary measure, that the zoning of the land is inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land (Fifth Method).

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

#### **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 Hornsby LEP are:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The development of the Loreto Normanhurst school site has been occurring on the subject site since the 1890s. The capacity of the school site is not directly linked to infrastructure capacity so much as the student cap that exists as part of the development consent for the site (DA/1277/2004/C). DA/1277/2004/C was most recently modified on the 27<sup>th</sup> July 2011 to include a cap of 1,150 pupils on the Loreto Normanhurst school site.

#### **Site Constraints**

The site is constrained by bushland to the south of the site and Pennant Hills Road to the north. It is surrounded by two local roads to the east and west. There are four single detached dwelling houses adjoining the north-eastern corner of the site. The existing built form of the site is predominantly limited to the northern end of the school campus with the playing fields and bushland located to the south.

The Concept Plan proposes to generally maintain this built form footprint at the northern end of the school, with the playing fields and bushland to be maintained as an asset for the school and community. In this way, the built form has been designed to avoid the site constraints and natural assets in a manner that will benefit the school community in the longer term. The site constraints will not be exacerbated or made worse as a result of the development.

In this way the height of buildings is a direct result of a masterplan that seeks to avoid the site constraints and maintain the key attributes of the site. The impact of the building envelopes on surrounding residential dwellings is discussed further in **Section 4.2.1**.

#### **Development Potential**

As discussed further in **Section 4.2**, the existing educational establishment is not reflective of the other surrounding low density residential development. Nevertheless, the Loreto Normanhurst school site is zoned R2 Low Density Residential. This zoning otherwise permits the following forms of development:

- Boarding houses;
- Dwelling houses;
- Education establishments; and/or
- Tourist and visitor accommodation.

As an educational establishment, the development potential of the site is considered to be greater than other permissible land uses. State planning instruments permit a greater level of development potential for educational establishments than otherwise allowed by the Hornsby LEP.

This is reflected through the provisions contained within the Education SEPP which permits that development consent may be granted for the purpose of a school that is State Significant Development despite the contravention of a development standard imposed by an Environmental Planning Instrument (EPI), in this case being the height of buildings standard imposed under the Hornsby LEP.

## Infrastructure Capacity

Separate to residential sites, the infrastructure capacity of a school site is managed by caps on total student numbers. This cap is generally linked to the educational and recreational floor space on site as well as the car parking available. In this way, the proposal seeks to undertake a staged redevelopment of the Loreto Normanhurst school site to ensure that all relevant infrastructure is provided simultaneous to the increasing student capacity of the site.

The Response to Submissions and Amended DA Report prepared by Ethos Urban sets out the infrastructure provision that is to align with student population growth (See Section 4.2). The future detailed DA's for buildings within each envelope will detail how the student numbers will increase in accordance with the infrastructure capacity for the site.

## Summary

Based on the analysis above, the proposal is considered to be appropriate for the site given the site's constraints, development potential and infrastructure capacity. As such, despite the exception to the development standard, the Concept Masterplan is considered to achieve the objectives of the height of building standard.

### 4.1.2 Fifth 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

The site is zoned R2 Low Density Residential. This is reflective of the surrounding site context rather than the educational land use itself. Schools within NSW tend to be zoned either to reflect the adjoining land uses or SP2 Infrastructure (Educational Establishment) with no height limit. This is reflected in a number of nearby schools as outlined in **Table 1**.

**Table 1 Analysis of nearby schools**

School	Zone	Height Limit(s)
Abbotsleigh School	SP2 Infrastructure	No height limit
Knox Grammar	SP2 Infrastructure	No height limit
Epping Boys High School	SP2 Infrastructure	No height limit
Warrawee Public School	SP2 Infrastructure	No height limit
Wahroonga Public School	SP2 Infrastructure	No height limit
Killara Public School	SP2 Infrastructure	No height limit
Chatswood High School	SP2 Infrastructure	No height limit
St Anthony's Catholic Primary School (Marsfield)	SP2 Infrastructure	No height limit

The height limits that apply to these school sites are not limited in the same manner that applies to the adjoining Low Density Residential zones. This reflects the differing uses that are likely to be developed on these sites and the limited constraints that these larger school sites face. It is considered that the intent of this land use and lack of height limit is to facilitate the development of school sites in an appropriate manner that provides appropriate student capacity in a built form that differs from standard low density residential housing.

Therefore, the zoning and height of building that are established within the Hornsby LEP are inappropriate for subject site, given its context as an established educational establishment that already exceeds the maximum heights and has operated on the site for over 100 years. The site has been developed in a manner consistent with the development potential for this site and it is considered unreasonable or unnecessary to enforce the height of buildings development standard that applies under the Hornsby LEP.

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

The following matters are environmental planning grounds which are considered to justify the contravention of the height of buildings development standard.

### **4.2.1 Ground 1: Limited impacts on surrounding development**

Loreto Normanhurst occupies that majority of the block of land bounded by Pennant Hills Road to the north, Osborn Road to the west and Mount Pleasant Avenue to the east and south. There are only four privately owned residential dwellings within this entire block of land that are situated to the north-east of the site. This ensures that the impacts associated with the Concept Masterplan are largely limited to the Loreto Normanhurst school site.

#### ***Streetscape***

The development has been designed having consideration to the existing streetscape. Along Osborn Road and Mount Pleasant Avenue. Along these two frontages, the future building envelopes will largely present as 2-3 storey buildings that fall with the topography of the land. In this way, the buildings with the non-compliances largely occur within the centre of the Loreto Normanhurst site.

It is noted that the future design of each building will take into consideration the existing streetscape.

#### ***Overshadowing***

AJC have prepared a shadow analysis for the development (refer to **Figure 3** below). Due to the size and shape of the Loreto Normanhurst school site, the absence of any residential neighbours to the south of the school site as well as the design and scale of the proposed building envelopes on campus, there will be limited overshadowing impacts outside of the school grounds.

The shadow analysis demonstrates that most shadows will fall within the Loreto Normanhurst school site or onto Osborn Road or Mount Pleasant Avenue. There will be limited overshadowing impacts on the front yards of 10, 12, 14 and 18 Osborn Road during the morning of the winter solstice. Solar access to these properties will be maintained from midday until 3pm. In the afternoon (3pm) of the solstice, there will be minor overshadowing impacts on properties to the east of Mount Pleasant Avenue. This shadowing will only occur from 3pm onwards.

It is noted that the overshadowing impacts associated with the Concept Proposal are limited to one portion of the day (being either 9am or 3pm) and have a minor impact on only a portion of the dwellings identified. In this way, the amenity impacts associated with the building envelopes are considered minor and appropriate in the circumstance.



**Figure 3 Concept Plan Shadow Diagrams – 9am and 3pm Winter Solstice**

Source: AJ +C

### Heritage

A Heritage Report has been prepared by Weir Philips (**Appendix L**) to assess the impact of the concept proposal and the Stage 1 works in relation to the heritage significance of the Loreto Normanhurst site. The Heritage Report considers the works to have either minimal impact or acceptable impact as the building works are proposed to the parts of the campus identified as having low significance. Furthermore, the overall concept proposal is in keeping with the social significance of the campus and will ensure ongoing use of the site for educational uses consistent with the historical use of the site.

### Acoustic

A Construction and Operational Noise Report has been prepared by Wilkinson Murray (**Appendix F**) to assess the noise generating sources during operation, and recommend any mitigation measures to minimise potential noise impacts on surrounding occupiers of land. This report finds that the continued operation of the school, with additional buildings and plant equipment proposed as part of the Concept Masterplan, will be capable of complying with relevant noise criteria during operation.

### Visual Privacy

Visual privacy is largely achieved through suitable building separation between the building envelopes and surrounding residential dwellings. Future buildings will be setback 6 metre from the site boundaries and, when combined with the 20 metre wide road reserve, there will be sufficient separation between the school and surrounding sites. The impacts on the limited adjoining dwellings will be addressed through the design and orientation of the future built form. All future buildings will be predominantly oriented inwards towards the rest of the school, thereby avoiding

## 4.2.2 Ground 2: Increased Demand for Educational GFA

There is a recognised demand for increased educational floor space and student spaces within Sydney including the North District. The North District Plan and NSW Department of Education have identified a need to cater for 21,900 additional students within the northern district by 2036. This significant demand for student spaces was reflected through the introduction of the Education SEPP in 2017, which sought to streamline the process for the development of new and expanding school facilities.

In this case, the additional Educational GFA provided within the taller building envelopes makes provision for additional student spaces within an expanded junior and senior school. Loreto Normanhurst will eventually cater for all years between Kindergarten and Year 12. This will ensure that parents can send their children to a single school for the length of their education.

Therefore, building envelopes will allow Loreto Normanhurst to cater for the increasing student numbers within the North District; in a manner consistent with the strategic intent of the Education SEPP, the Greater Sydney Regional Plan and the North District Plan.

#### **4.2.3 Ground 3: Reduced Site Coverage**

The Loreto Normanhurst school campus is divided into three distinct components, being the school buildings in the north, the playing fields and the bushland to the south. The open space provided by the playing fields and bushland have been recognised within the Concept Masterplan as key features of the school site. The bushland is protected by an ecological listing and is characterised as endangered Blue Gum High Forest. The open space and playing fields contribute to the co-curricular activities undertaken by Loreto Normanhurst and will be increasingly important as the student numbers increase within the school campus.

In this way, the educational floor space has primarily been maintained at the northern end of the site, within the existing school building footprint. The development of taller envelopes within this portion of the site consolidates the schools building footprint and will ensure easier movement for students amongst the educational buildings at the northern end of an otherwise large school site. Ultimately, this design consideration avoids a greater site coverage that could otherwise be proposed across several smaller buildings that would reduce the open space available to the 2,000 students proposed on site. The works within the Concept Masterplan will ultimately increase the landscaped area, which reinforces the key natural attributes whilst supporting the growth of the school.

#### **4.2.4 Ground 4: Site Suitability**

The site is an existing school site that has been in use as an educational establishment for more than 100 years. In this way, the site continues to remain suitable for the development of a slightly larger school site as:

- Its large site area ensures there is limited impacts on the amenity of surrounding properties;
- The school is within walking distance of Normanhurst Railway Station which will encourage public transport usage amongst students; and
- There is more than sufficient level of recreational space on site for the proposed 2000 pupils.

#### **4.2.5 Ground 5: Development as part of a 30-year Concept Masterplan**

The Concept Masterplan seeks to develop the Loreto Normanhurst site over the course of the next 30 years. As a result, the building envelopes have been structured in such a way so as to allow a certain level of flexibility in the design of future buildings. The flexible envelopes allow for a variety of possible forms to be considered on site and this will prove to be important in responding to the changing nature of educational establishments.

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

In summary, the environmental planning grounds which justify the proposed variation to the maximum building height include:

- The project helps meet the ongoing strategic intent by providing additional educational GFA including;
  - Assisting in meeting the aims and objectives of the Greater Sydney Regional Plan and the North District Plan; and
  - Is in keeping with the aims of the Education SEPP.
- The impacts of the additional height are largely limited to the Loreto Normanhurst school site and surrounding road network and result in minimal amenity impact to the surrounding residential sites;
- The increased height in key locations across the site limits the site coverage of the school, maintaining the natural environment as a key feature of the school site;



- The Concept Proposal will be developed across a 30-year timeframe, with the proposed envelopes to be further refined in a manner that is flexible and that responds to the increasing student numbers and changing educational needs of the school; and

Ultimately the Concept Proposal seeks to facilitate the long-term redevelopment of Loreto Normanhurst school in a manner that is consistent with the state and regional strategic planning for educational facilities.

#### **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 height of buildings development standard, for the reasons discussed in **Section 4.1** of this report.

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

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, as demonstrated below.

##### **Objective (a): To provide for the housing needs of the community within a low density residential environment.**

Not applicable. The site has never been used for the purposes of low density residential housing.

##### **Objective (b): To enable other land uses that provide facilities or services to meet the day to day needs of residents.**

The development seeks to facilitate the long-term redevelopment of an existing educational establishment. Loreto Normanhurst is an existing school site that has provided educationally 'services' to the northern Sydney community since 1897. The redevelopment of the school will facilitate additional student capacity within the large school site that will assist in meeting the demand for schooling facilities within Sydney's northern region.

The increase in the student cap from 1,150 to 2,000 will ultimately provide 850 additional student spaces. This will go some way to addressing the required 21,900 student spaces that are required in the North District over the next two decades.

In this way, the redevelopment of the Loreto Normanhurst school site through the provision of taller building envelopes will provide a facility that increasingly meets the day to day needs of the growing residential population in the North District of Sydney.

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

In *Initial Action v Woollahra Municipal Council* [27], it is established that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. Accordingly, it is demonstrated throughout this Clause 4.6 that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

In addition to this, the Concept Masterplan is considered to be in the public interest as the proposed development:

- Will contribute to increased educational floor space and additional student capacity within the North District at Loreto Normanhurst;
- Will maintain the key natural features of the Loreto Normanhurst site being the Blue Gum High Forest and playing fields located at the southern end of the school campus;
- Will allow for the ongoing renewal of Loreto Normanhurst, which has been operating on-site for the educational benefit of the local community since 1897; and
- Will have little to no adverse impact on amenity of adjoining sites.

## 5.0 Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary 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.

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

The variation of the building height development standard is considered to be in accordance with the strategic direction of State and regional planning documents in facilitating the development of educational establishments. Specifically, we note that:

- The Greater Sydney Region Plan 'A Metropolis of Three Cities' outlines the importance of developing educational establishments;
- The Education SEPP was gazetted in 2017 in order to facilitate the streamlined development of educational establishments;
- The North District Plan recognises the increasing demand for educational establishments that this development will provide in stating that:
  - Planning decisions need to support the need for infrastructure – including education infrastructure;
  - The NSW Department of Education estimates that an extra 21,900 students will need to be accommodated in both government and non-government schools in the North District by 2036, a 20% increase;
  - Encourages the joint and shared use of school facilities with local government and the private sector to develop innovative ways to provide school infrastructure;
- The proposal will increase local employment opportunities through the creation of 194 jobs during construction and 6 staff positions during operation of the Stage 1 Boarding House facility;
- The site is well located nearby to public transport connections, including Normanhurst Railway Station, and adjacent to Pennant Hills Road which will have additional capacity following the opening of Northconnex; and
- The exception to the height limit has been designed to avoid any adverse impacts on heritage or ecological assets.

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

There is no public benefit that would arise from maintaining the development standard. As noted in the preceding sections, the proposed variation will not give rise to any unacceptable adverse environmental impacts.

The objectives of state and local strategic planning policies would be thwarted if strict compliance was required. The non-compliance will have no discernible impact upon neighbouring properties; whilst a poorer built form and site coverage outcome would result from strict compliance.

### 5.3 Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Secretary-General before granting concurrence.

None. There are no other matters required to be taken into account by the Secretary.

## 6.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the Hornsby LEP is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to vary the height of buildings development standard. 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.

It is noted that the Education SEPP does not require strict compliance with the development standards contained within the Hornsby LEP. Notwithstanding, this clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height of buildings development standard:

- The State Significant educational establishment is not required to achieve strict compliance with the height of buildings clause contained within the Hornsby LEP.
- The proposed development achieves the objectives of the height of buildings development standard because:
  - The height of the development is appropriate given the sites context and land use;
  - The height of the development does not result in an adverse impact on the amenity for any adjoining residences beyond what would be considered reasonable;
  - The proposed student capacity of the site will be addressed through increased educational floor space, recreational floor space and car parking throughout the site as part of future development applications;
  - The development is sympathetic to the heritage items on site and will allow for the appropriate transition in height to these items;
- The proposed development is consistent with the objectives of the R2 Low Density Residential zone.
- There are sufficient environmental planning grounds for the variation to the standard including:
  - The need to meet demand for educational floor space and student spaces within Sydney and, in particular, the North District;
  - There are limited adverse impacts on the amenity of surrounding sites;
  - The building envelopes result in a reduced site coverage which ensures that there is no impact on the ecological significance of the site;
  - The development of a consolidated school at the northern end of the school site improves access amongst students and staff; and
  - The flexible envelopes allow for a variety of possible forms to be considered on site and this will prove to be important in responding to the changing nature of educational establishments.
- The objectives of state and local strategic planning policies in providing additional educational floor space would be thwarted if strict compliance was required with the height of buildings development standard;
- The proposed development is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the site.

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