

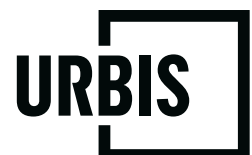


WESTERN SYDNEY UNIVERSITY BANKSTOWN CITY CAMPUS

CLAUSE 4.6 VARIATION REQUEST - HEIGHT OF BUILDINGS

BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2015

Prepared for
WESTERN SYDNEY UNIVERSITY
1 October 2020



URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Murray Donaldson
Senior Consultant	Genevieve Beard
Consultant	Georgia McKenzie
Project Code	SA7500
Report Number	Final v 2

All information supplied to Urbis in order to conduct this research has been treated in the strictest confidence. It shall only be used in this context and shall not be made available to third parties without client authorisation. Confidential information has been stored securely and data provided by respondents, as well as their identity, has been treated in the strictest confidence and all assurance given to respondents have been and shall be fulfilled.

© Urbis Pty Ltd
50 105 256 228

All Rights Reserved. No material may be reproduced without prior permission.

You must read the important disclaimer appearing within the body of this report.

urbis.com.au

CONTENTS

1.	Introduction	1
1.1.	Preliminary	1
1.2.	Project Context	1
1.2.1.	Planning Proposal	1
1.2.2.	Early Works	1
1.2.3.	SSD DA	1
2.	Context	3
2.1.	Site Description	3
2.2.	Existing Development	4
2.3.	Locality Context	5
2.4.	Planning Context.....	8
3.	Proposed Development	12
4.	Relevant Assessment Framework.....	15
5.	Variation of Height of Buildings Standard.....	16
5.1.	Development Standard	16
5.2.	Proposed Variation to Maximum Height of Building	17
6.	Assessment of Clause 4.6 Variation	18
6.1.	Key Questions.....	18
6.2.	Considerations	18
6.2.1.	Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	18
6.2.2.	Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard	22
6.2.3.	Clause 4.6(4)(a)(i) – Has the written request adequately addressed the matters in sub-clause (3)?	23
6.2.4.	Clause 4.6(4)(a)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?	23
6.2.5.	Clause 4.6(5) – Concurrence of the Planning Secretary.....	24
7.	Conclusion.....	25
	Disclaimer.....	26

FIGURES

Figure 1 – Aerial Photograph of the Site	4
Figure 2 – Site Images.....	4
Figure 3 – Location Map	5
Figure 4 – Surrounding Development.....	7
Figure 5 – Known Future Development Context	8
Figure 6 - South façade and site context visualisation (with indicative signage)	13
Figure 7 - BLEP Height of Building Map.....	16

PICTURES

Picture 1 – The site as viewed from the north west.....	4
Picture 2 – The site as viewed from the east.....	4
Picture 3 – North: Medical Centre (Left) and High Density Residential (Right).....	7
Picture 4 – South: Paul Keating Park	7

Picture 5 – **East:** The Appian Way 7

Picture 6 – **West:** Bankstown Library and Knowledge Centre 7

Picture 7 – **East:** Bankstown Civic Tower 7

Picture 8 – **South West:** Bankstown Council Chambers 7

TABLES

Table 1 - Proposed amendments to Bankstown LEP 2015..... 1

Table 2 – Site Description..... 3

Table 3 - Proposed Building Height Increase 17

Table 4 – Assessment of consistency with the objectives of the building height standard 19

Table 5 – Assessment of Compliance with Land Use Zone Objectives..... 23

1. INTRODUCTION

1.1. PRELIMINARY

This Clause 4.6 Variation Request (Request) has been prepared on behalf of Western Sydney University (the applicant) and accompanies a State Significant Development (SSD) Development Application (DA) for the proposed Western Sydney University (WSU) Bankstown City Campus at 74 Rickard Road, Bankstown.

The Request seeks an exception from the maximum building height prescribed for the site under clause 4.3 of *Bankstown Local Environmental Plan 2015* (Bankstown LEP) pursuant to clause 4.6 of the LEP.

This report should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Urbis Pty Ltd and dated 24 October 2019 and the Response to Submissions Report prepared by Urbis and dated 24 August 2020.

1.2. PROJECT CONTEXT

1.2.1. Planning Proposal

Canterbury – Bankstown Council (**Council**) is progressing a Planning Proposal (PP_2019_CBANK_004_00) to amend the maximum Height of Building and Floor Space Ratio (**FSR**) development standards applying to 74 Rickard Road, Bankstown (Lot 15, DP 777510) (**the site**) under the Bankstown Local Environmental Plan 2015 (**BLEP 2015**).

Table 1 - Proposed amendments to Bankstown LEP 2015

Development Standard	Existing max.	Proposed max.
CI 4.3 Height of Buildings (HOB)	53 metres	83 metres
CI 4.4 Floor Space Ratio (FSR)	4.5:1	8:1
New Clause: <i>Development must allow for 4 hours of continuous solar access to a consolidated area of Paul Keating Park between 10am and 3pm on 21 June (inclusive of existing shadow). The size of the consolidated area must be a minimum 50% of the area of Paul Keating Park (not including the footprint of existing buildings)</i>		

At its meeting of 22 October 2019, Council resolved to proceed with the Planning Proposal subject to a number of suggested actions being completed, including preparation of a site-specific Development Control Plan (**DCP**) that sets out the principal design parameters applying to the site. A draft Site Specific DCP has been prepared to address Council's resolution and is currently under review by Council.

On 10 June 2020, the DPIE issued a Gateway Determination allowing the Planning Proposal to proceed subject to conditions.

1.2.2. Early Works

In September 2019, WSU submitted a DA (697/2019) to Council which proposes early works on the site for the proposed university. The early works include demolition, tree removal, bulk excavation, shoring and temporary anchors, services division and alterations to The Appian Way layback at Rickard Road.

The determining authority for the DA is the Sydney South Planning Panel as the development application is Council related and has a capital investment value over \$5 million. This application is currently under assessment.

1.2.3. SSD DA

In December 2019, WSU submitted the Western Sydney University Bankstown City Campus SSD DA (SSD_9831) to the Department of Planning, Industry and Environment (**the Department**) under *State Environmental Planning Policy (State and Regional Development) 2011*. The determining authority for the SSD DA is the Minister for Planning and Public Spaces.

Since submission of the SSD DA, WSU and their development partner Walker Corporation have worked extensively with Council to resolve concerns in relation to a variety of issues including solar access to Paul Keating Park, the proposed alignment of The Appian Way, overland stormwater flows and the public domain interface of the proposal.

A revised design is proposed within the Response to Submissions (RtS) Report prepared by Urbis which provides an in-depth and holistic response to all matters raised within the Submissions along with revised specialist documentation.

The revised design submitted with the RtS is discussed in further detail in **Section 2.4** of this Clause 4.6 Variation Request.

2. CONTEXT

2.1. SITE DESCRIPTION

The site is located at 74 Rickard Road, Bankstown and is legally known as Lot 15 in Deposited Plan (DP) 1256167. Prior to its consolidation in June 2020 the site was comprised of Lot 5 in DP 777510 at 74 Rickard Road, Bankstown and a portion of Lot 6 in DP 777510 at 375 Chapel Street, Bankstown.

The site boundaries are defined by Rickard Road (to the north), The Appian Way and Bankstown Civic Tower (to the east), Paul Keating Park (to the south) and Bankstown Library and Knowledge Centre (to the west).

Table 2 – Site Description

Feature	Description
Street Address	74 Rickard Road, Bankstown
Legal Description	Lot 15, DP 1256167
Site Area	3,678m ²
Site Dimensions	The site is irregular in shape with approximately a 58m frontage to Rickard Road, a depth of approximately 57m and a 51m frontage to Paul Keating Park.
Easements and Restrictions	<p>The site is burdened by a right of way (variable width) benefiting Canterbury Bankstown Council along the alignment of 'The Appian Way' to the east.</p> <p>The site benefits from a right of way (6.6m wide) over Lot 12 DP566924 along the alignment of the 'Library Driveway'.</p>
Site Topography	The site is relatively flat, with a fall of approximately one metre across the site from the north-western to the south-eastern corner.
Vegetation	The site currently contains a small lawn area and 19 trees which are proposed to be removed within an Early Works DA lodged with Council.
Hydrology	<p>The site is impacted by the 100-year average rainfall incidence (ARI) overland flood flow (categorised as Medium to High Flood Risk).</p> <p>Council and Sydney Water are currently undertaking works in the vicinity of the site which reduce the flood hazard.</p>

2.2. EXISTING DEVELOPMENT

The site is currently developed as a timed free public car park with 63 at grade car parking spaces and in part as an open lawn space (refer to **Vehicle access** to the site is via Rickard Road which also provides access via The Appian Way to the Bankstown Civic Tower basement car park.

The site is subject to medium - high risk flooding and prescribed airspace restrictions.

Figure 1 and **Figure 2**). Vehicle access to the site is via Rickard Road which also provides access via The Appian Way to the Bankstown Civic Tower basement car park.

The site is subject to medium - high risk flooding and prescribed airspace restrictions.

Figure 1 – Aerial Photograph of the Site



Source: NearMap

Figure 2 – Site Images



Picture 1 – The site as viewed from the north west

Source: Google Maps



Picture 2 – The site as viewed from the east

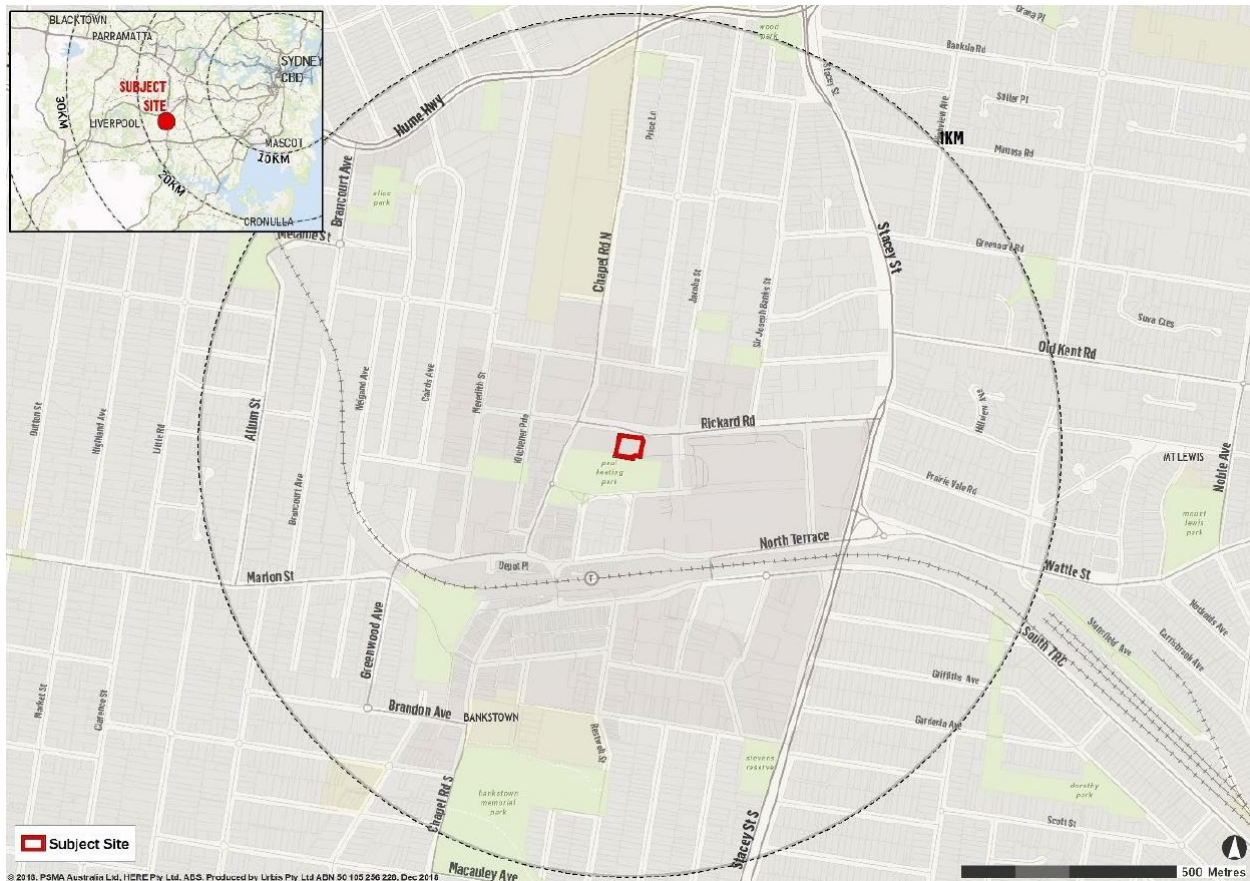
Source: Lyons Architects

2.3. LOCALITY CONTEXT

The site is located within the Civic Precinct of the Bankstown CBD, approximately 17km south-west of the Sydney CBD (refer **Figure 3**). The Bankstown CBD precinct is focused on the northern and southern sides of Bankstown Station with the site located in the northern precinct.

Bankstown is well connected by public transport via the Bankstown Railway Station and numerous high frequency bus services. The Sydney Metro City & Southwest Project will upgrade and convert all 11 stations between Sydenham and Bankstown to metro standards further increasing access to the Bankstown CBD. Bankstown is connected by road to the broader region via Stacey Street which connects to the South Western Motorway (south of precinct) and Hume Highway (north of precinct).

Figure 3 – Location Map



Source: Google Maps

Immediately surrounding the site are a range of building forms which are predominantly medium and high rise commercial and multi-storey mixed-use residential buildings:

North:

- Rickard Road is a regional road located immediately north of the site.
- A medical centre, 24/7 gymnasium and high density residential development is located immediately on the opposite side of Rickard Road.
- High density residential development is located further north of the site.

South:

- Paul Keating Park is located directly south of the site. Paul Keating Park is a focal public open space within the Bankstown Civic Precinct and is used for large scale cultural and community celebrations and events. It is also used as a venue for smaller community group activities, and informal park and playground use by the local community. The Paul Keating Park is currently undergoing master planning by Council.

- Further to the east and south of the Civic Precinct are the regional shopping centre 'Bankstown Central', a bus Interchange, street front commercial and shopping facilities.
- The Bankstown rail station and the adjoining bus interchange is located further south of the site.

East:

- The Appian Way is located immediately east of the site and currently functions as vehicular access to the site and basement parking of the Bankstown Civic Tower.
- The Bankstown Civic Tower is located on the opposite side of The Appian Way to site. It accommodates a mix of uses including commercial offices, Legal Aid NSW and the Bankstown Community Services Centre.

West:

- The Bankstown Library and Knowledge Centre (BLaKC) is located immediately west of the site and was completed in 2014. The three-level building houses a public library, and adjoins the 300 seat Bryan Brown Theatre, public function, conference and exhibition spaces, and a cafe. The building is surrounded by a raised podium to the south which steps down as tiered seating to the Paul Keating Park.
- Small scale retail and commercial premises are located further east.
- A heritage item, the Bankstown Council Chambers is located to the south west of the site, within Paul Keating Park.

Figure 4 – Surrounding Development



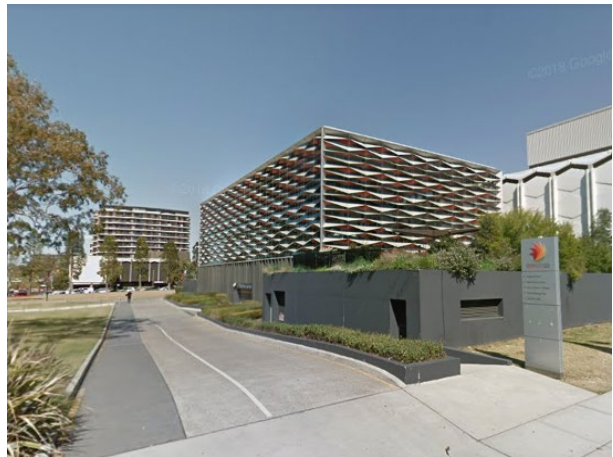
Picture 3 – **North:** Medical Centre (Left) and High Density Residential (Right)



Picture 4 – **South:** Paul Keating Park



Picture 5 – **East:** The Appian Way



Picture 6 – **West:** Bankstown Library and Knowledge Centre



Picture 7 – **East:** Bankstown Civic Tower

Source: Google Streetview



Picture 8 – **South West:** Bankstown Council Chambers

The commercial sites within the Northern CBD Core precinct, are expected to undergo a period of urban renewal and redevelopment due to the age and capacity of existing building stock and the planned public transport infrastructure enhancements. An exception to this is the Bankstown Library and Knowledge Centre which is recently new and not envisaged to be redeveloped, the Town Hall/Bryan Brown Theatre, which is a substantial community asset and the heritage Council Chambers. The proposed new university will form an anchor in the Civic Precinct and a central focus of the Northern CBD Core accelerating urban renewal.

A number of significant projects are underway and in planning in the immediate locality including:

- The Compass Site proposal, immediately to the south of Paul Keating Park, entails the construction of 4 new mixed-use towers up to 83m tall, together with low height commercial and retail facilities and undercover parking.
- 32 Kitchener Parade, covering a site that extends along the west side of Kitchener Parade from Marion Street to Rickard Road, and includes multiple residential and commercial buildings with a maximum height of 45m.
- The Bankstown Sports Club 'Flinders Centre' is a 9 storey commercial office building approved in 2015.
- Bankstown RSL is a 10 storey mixed use development, comprising new Bankstown RSL Club facilities and a 240-room hotel, with a maximum height of 35m. The application was approved by the Sydney West Joint Regional Planning Panel in March 2016.
- Bankstown Central is the subject of ongoing masterplan discussions with Council. It has been identified as a redevelopment opportunity, given its large land holding under single ownership in the Bankstown Station Precinct Plan. The future development of Bankstown Central could see an increase in retail and commercial floor space. The plan states there is potential to increase the maximum development height to RL 152.4m AHD at the site.

Figure 5 – Known Future Development Context



Source: Lyons

2.4. PLANNING CONTEXT

South District Plan

The South District Plan is a 20-year plan to manage growth in alignment with the 40-year vision for Greater Sydney as set out in the Greater Sydney Regional Plan – A Metropolis of Three Cities. The South District includes the Canterbury-Bankstown, Georges River and Sutherland local government areas.

Bankstown CBD is identified as one of six strategic centres in the South District. It includes Bankstown Central – a large retail shopping adjacent to the bus and rail transport interchange along with civic, community and health care services.

The South District Plan acknowledges the following opportunities for Bankstown CBD:

- Sydney Metro City & Southwest - The improved frequency and reduced travel time already associated with the Sydney Metro City & Southwest project has the potential to strengthen economic links to the Harbour CBD and stimulate economic opportunities to attract jobs in Bankstown. New jobs and housing are also planned for Bankstown as part of the metro upgrade.
- The emerging Bankstown-Lidcombe Health and Education Precinct - Bankstown-Lidcombe Hospital is located close to Bankstown strategic centre. A range of allied health care providers and services are already located at the centre, as is TAFE Bankstown College. A health and education precinct will emerge from the colocation of health and education facilities in the centre, as well as improved transport connections from Sydney Metro City & Southwest. Over time, investments in the centre have the potential for it to emerge as a health and education precinct.
- Western Sydney University - The establishment of a world-class teaching and research campus in the Bankstown strategic centre (identified on the current site) as a key catalyst for introducing a new vibrancy to the centre. This will have an economic flow-on effect, creating opportunities for more local jobs, including knowledge-intensive jobs.
- Bankstown CBD Collaboration Area - Bankstown CBD has been identified as a potential Collaboration Area for planning for a highly productive, economically vibrant and liveable centre. Collaborative planning will assist in identifying locations for the key facilities and create opportunities for allied health and education services to locate in the precinct.
- Strategic Sites - Investment in, and redevelopment of, strategic sites also provide a unique opportunity for these to be examples of innovative forms of sustainable development.

In relation to a WSU city centre presence, the South District Plan also confirms Council and the University have specifically identified the current site as suitable site for a vertical university campus:

"Western Sydney University will establish a worldclass teaching and research campus in the Bankstown strategic centre. The University and Canterbury-Bankstown Council have identified a suitable site located between Council's administration building and Bankstown Library and Knowledge Centre. The campus will potentially accommodate up to 7,000 students."
- (South District Plan page 60)

Connective City 2036 - City of Canterbury-Bankstown Local Strategic Planning Statement (LSPS) 2020

The LSPS reinforces Bankstown City Centre as Canterbury Bankstown's premier urban centre and the location for commerce, civic, cultural, administrative and social activity.

Already connected to Greater Sydney by a mass transit system, it acknowledges the centre will be enhanced by the introduction of major infrastructure such as Sydney Metro, universities, renewal of key sites, and a new Hospital (subject to investigation by Health Infrastructure NSW).

The LSPS acknowledges the following opportunities for Bankstown CBD:

- The Appian Way will be transformed into a pedestrianised street, lined with shops and restaurants. Streets will radiate from The Appian Way to an interconnected network of places with character, creating a 24-hour city.
- Important precincts within Bankstown including Saigon Mall, Bankstown Mall and the Civic Precinct, will continue to define the character and attractiveness of Bankstown as the City's primary civic, cultural and shopping places.
- Precinct Anchors - Major public health, transport and education institutions form anchors in the precinct including a new hospital (subject to investigation by Health Infrastructure NSW).
- Chapel Road Precinct and Bankstown will be the location for major civic and cultural spaces and places that will draw people from across the city to enjoy major events and celebrations.
- Bankstown - To include taller, high density commercial and residential towers, with commercial uses lining most streets, subject to working with Bankstown Airport and within aviation safety parameters for height in the Bankstown City Centre.
- Chapel Road Precinct - A north-south spine connecting through the heart of Bankstown Civic Precinct. Designed as a tree-lined, wide footpath boulevard where people can take the bus, walk, cycle or drive it

will be the focus for new education, knowledge intensive and cultural jobs connecting public buildings, parks and public places.

- Paul Keating Park - is a key open space and will continue to offer the City quality outdoor spaces for community and civic events.
- Renewal of major sites - will offer new opportunities for new open space and linkages

In relation to the WSU campus specifically, the LSPS identifies the role the WSU Bankstown City Campus plays in anchoring the Bankstown Health and Education Precinct as well as the rapid change an additional 12,000 students will have on Bankstown City Centre. It also acknowledges the ongoing commitment from CBC to engage with WSU as collaborative and active partners in shaping the City's development including:

"The University of Western Sydney has committed to a new campus in Bankstown which will lead to other associated job and business opportunities including over 650 teaching and support staff." - (LSPS 2020 page 50)

"Bankstown City Centre is experiencing a period of rapid change including a planned Western Sydney University Campus for up to 12,000 students." - (LSPS 2020 page 60)

"Local organisations such as Western Sydney University, Bankstown Hospital, Bankstown Airport, Sydney Airport, and major businesses that have the size will be active partners in the City's development." - (LSPS 2020 page 98)

Bankstown Local Environment Plan (BLEP) 2015

The Bankstown LEP 2015 identifies the following development controls for the site.

Zoning and Permissibility - The subject site is zoned B4 Mixed Use under the Bankstown LEP 2015. As illustrated in Figure 1, the surrounding area is predominately zoned B4 with the exception of land to the south which is zoned RE1 Public Recreation.

Height of Buildings - Clause 4.3 of the Bankstown LEP 2015 establishes a maximum building height in metres above existing ground level across the site of 53m. To the north the predominate maximum building height is 35m.

Floor Space Ratio - Clause 4.4 of the Bankstown LEP 2015 establishes the maximum floor space ratio (FSR) for the site of 4.5:1 as discussed in **Section 5** of the Request.

Heritage - Schedule 5 of Bankstown LEP identifies Item No. I6 'Council Chambers' as a locally significant item on the south-western portion of the adjoining property known as 375 Chapel Rd, Bankstown.

Canterbury-Bankstown Draft Consolidated Local Environmental Plan (Draft CBLEP)

The draft Consolidated Canterbury Bankstown LEP was on public exhibition until 24 April 2020. The planning controls that will apply to the site under the consolidated CBLEP are the same as those currently contained in BLEP 2015.

Draft Employment Land Strategy (ELS)

The draft Employment Land Strategy is a supporting study which is on exhibition in parallel to the draft CBLEP. The draft ELS identifies three strategic directions which frame and organise the planning and economic development actions for the LGA being:

1. Enhance amenity while accommodating growth and change.
2. Develop strategic assets - of which WSU is specifically identified as one of three important strategic assets in the LGA.
3. Modernise and reposition industry to build on locational advantage.

Directions 1 and 2 are of specific relevance to the WSU proposal and speak to the balanced approach required to deliver both *"high amenity and sustainable development"* and ensure *"planning recognise and seek to maximise economic outcomes from the presence of strategic assets"* (page 34). The draft ELS also confirms the indicative scale of the WSU campus in line with the design brief for the proposed building as accommodating *"7,000-10,000 students"* - (ELS page 39).

The ELS identifies the following key action for the commercial and administrative core precinct:

"A review of planning controls including height and floor space controls subject to development of a place plan" - (ELS page 244).

This reflects the intent to develop precinct specific controls for the WSU site and achieving a balanced approach between development and amenity.

Bankstown Development Control Plan (DCP) 2015

The Bankstown Development Control Plan 2015 (Bankstown DCP 2015) identifies the site as being located within the Northern CBD Core, at the heart of Bankstown CBD. The Northern CBD Core Precinct is described as:

"The Northern CBD Core precinct is located to the immediate north of the railway line. The Civic Precinct and Paul Keating Park form the central focus, and the established character is distinctly commercial due to a concentration of major civic, office and retail buildings (namely Bankstown City Council, Bankstown Court House, Bankstown Police Area Command, Compass Centre and Bankstown Central, which is a regional shopping centre).

This precinct is highly accessible to the railway station and bus interchange, and as a result, this precinct is characterised by taller buildings and higher densities compared to other precincts.

The desired character is to have the Northern CBD Core precinct continue to function as the heart of the City of Bankstown, with a mix of retail and commercial activities on the ground and first floors, and high density living above.

*Development will generally be in the form of tall buildings to create an identifiable skyline image for the Bankstown CBD. **The tallest buildings will generally locate around Paul Keating Park to define the Civic Precinct and to take advantage of the amenity provided by the park.**" - (DCP page 6)*

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to support a SSD DA for a new tertiary education establishment with ancillary retail uses. The proposed development has an estimated capital investment value of greater than \$30 million and accordingly, is classified as a State significant development (SSD) under clause 15(3) in Schedule 1 of *State Environment Planning Policy (State and Regional Development) 2011* (the SRD SEPP).

A detailed description of the proposed development is provided in the Environmental Impact Statement (dated 24 October 2019) and the Response to Submissions Report (dated 26 August 2020) both prepared by Urbis Pty Ltd. The proposal is also detailed within the Architectural Plans prepared by Lyons and consultant reports accompanying the EIS and RTS.

A summary of the key features of the proposed development is provided below:

- 19 storey building with a maximum height of 83m and a gross floor area (GFA) of 29,384m² resulting in a floor space ratio (FSR) of 8:1.
- Four distinct building volumes:
 - Podium
 - Lower tower
 - Mid tower
 - Cantilever.
- Two basement levels including 87 car parking spaces, bicycle parking and end of trip facilities, a loading dock, back-of-house storage and plant;
- Ground floor retail tenancies, shared lobby, multi-purpose tiered lecture space, showcase areas, amenities and plant equipment;
- Above ground levels comprising tertiary institution, conference facility and university/ education floor space;
- Landscaped podium terraces and balconies with a total area of 3,399m²;
- Ground level landscaping and public domain works including the provision of a pedestrian plaza along The Appian Way and a revitalised Rickard Road;
- Internal fit-out; and
- Signage zones.

The built form has resulted from an iterative design process which sought to achieve a high architectural standard, while considering a range of issues around the impact and integration of the proposed development with its immediate surroundings.

Consultation with the GANSW and the Council have been key to the development of the proposed design as detailed in the accompanying RtS Report.

Bulk and Scale

The building is designed as four distinct volumes, which are defined by recessed terraces and the ground floor. This articulation creates a striking building and mitigates against the building appearing monolithic.

A scalar relationship with adjoining civic buildings is created, the roof of the podium volume directly aligns with the BLaKC roof parapet, and the top of the Civic Tower's chamfered glazed base (see **Figure 6**).

The mid-tower volume aligns with height of the apartments to the north, providing a "soft datum" across the Civic Precinct buildings fronting Rickard Road (see **Figure 6**).

Figure 6 - South façade and site context visualisation (with indicative signage)



Source: Lyons

Visual Impact

The architectural design responds to near and far views, and the building will be clearly visible along view corridors along The Appian Way, along Rickard Road, and from more distant vantage points.

The impact of the proposed building is assessed as follows:

- It will be a landmark that identifies Paul Keating Park and the Civic Precinct.
- Together with the Civic Tower, it will 'bookend' the northern end of view lines along The Appian Way from Bankstown Station.
- It will transform views out of the adjacent buildings, which currently overlook the site.
- The heritage Council Chambers will not be dominated by the building, as it is located some distance away, and is surrounded by open civic spaces and established trees.
- It converses with adjoining buildings, with the roof of the podium volume aligning with the BLaKC roof, and the mid-tower volume creating a "soft datum" aligned with the Civic Tower and apartments to the north.
- It is consistent with the character of the Bankstown CBD, which will be the subject of major redevelopment projects in coming years as it transforms to a major, metropolitan centre.
- Its dramatic façade and sculptural form comprising four stacked volumes will contribute to a dynamic and interesting skyline.

It is also noted that the site is strategically located, which is reflected in the District Plan, Local Strategic Planning Statement (LSPS) and site specific Planning Proposal. Having regard to the above, it is unreasonable for residents and owners of the surrounding developments who currently enjoy views over the site to expect that these views will be maintained in perpetuity. The retention of these views is only contingent on the subject site not being redeveloped pursuant to Council's vision.

Solar

The site is on the northern side of existing recreation and civic spaces in Paul Keating Park and The Appian Way, and therefore minimising potential shading has been a primary design objective.

The site is currently shaded in the morning by the 12 storey Civic Tower to the east, and in the late afternoon by the lower BLaKC to the west.

On 22 October 2019, Council resolved to proceed with an LEP amendment that would increase the maximum height and FSR permitted on the site. Simultaneously, Council adopted a proposed solar access control:

“Development must allow for 4 hours of continuous solar access to a consolidated area of Paul Keating Park between 10am and 3pm on 21 June (inclusive of existing shadow). The size of the consolidated area must be a minimum 50% of the area of Paul Keating Park (not including the footprint of the Council Chambers).”

On 29 July 2020 Council confirmed that the proposed building complies with this control. This was achieved by redistributing floor area from the cantilever volume to the mid tower volume.

4. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of *Bankstown Local Environmental Plan 2015* (BLEP) includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of BLEP are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for, and from the development.

In determining whether to grant consent for a development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

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

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that 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 in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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.

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

Consent authorities for State significant development (SSD) may assume the Secretary's concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

This clause 4.6 request demonstrates that compliance with the maximum height of buildings prescribed for the site in clause 4.3 of BLEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

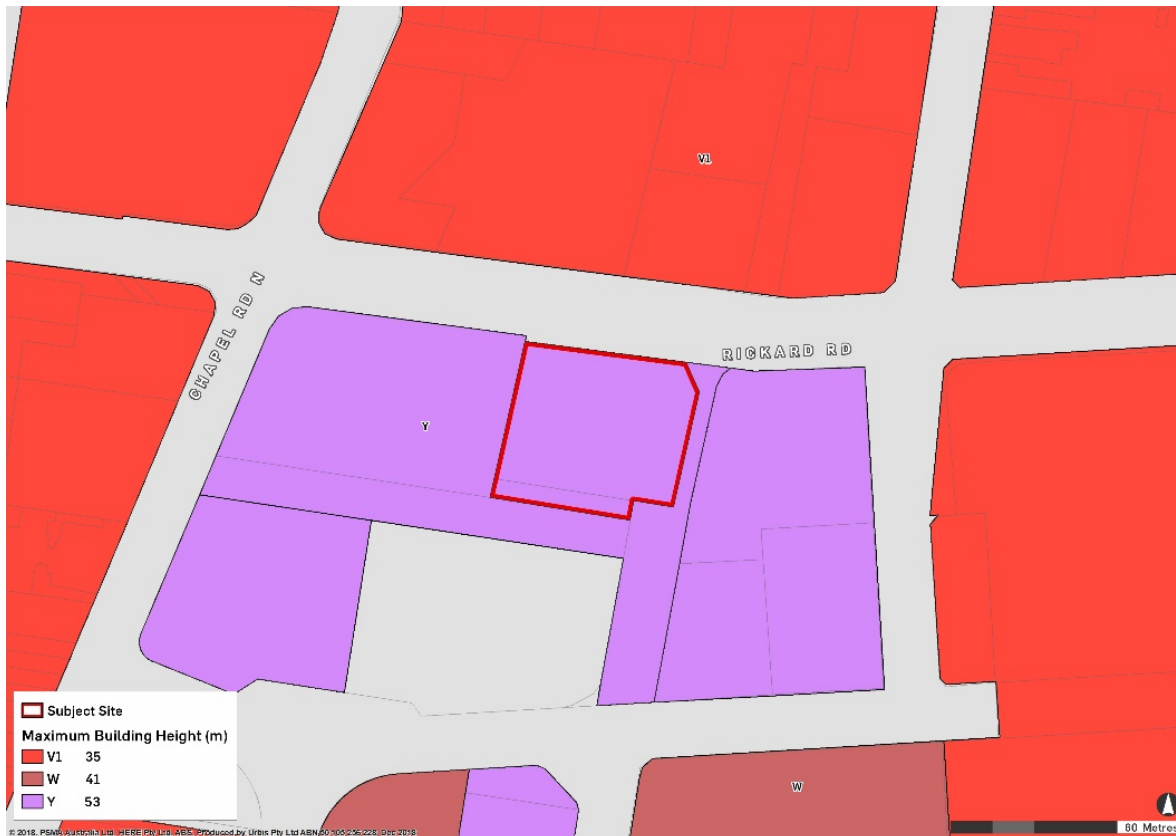
5. VARIATION OF HEIGHT OF BUILDINGS STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

5.1. DEVELOPMENT STANDARD

Clause 4.3(2) sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 53m as shown in **Figure 7** below.

Figure 7 - BLEP Height of Building Map



Source: BLEP

The objectives of clause 4.3 as set out in clause 4.3(1) of the BLEP are:

- to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- to provide appropriate height transitions between development, particularly at zone boundaries,*
- to define focal points by way of nominating greater building heights in certain locations.*

The definition of building height under clause 4.3 of BLEP is:

building height (or height of building) means—

- in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

5.2. PROPOSED VARIATION TO MAXIMUM HEIGHT OF BUILDING

This Clause 4.6 variation request seeks to gain approval for a variation to the maximum building height.

Table 3 - Proposed Building Height Increase

Current Permitted Maximum	Proposed	Increase
53m	83m	30m (56%)

The proposed contravention can be considered well founded because:

- A Planning Proposal application (PP_2019_CBANK_004_00) has been made by the Council to the DPIE to increase the permitted height on the site from 53m to 83m, and the FSR from 4.5:1 to 8.0:1. The planning proposal was submitted to the DPIE in November 2019, and a Gateway Determination was issued on 10 June 2020.
- The proposed built form has evolved from eight key urban design principles that have been established with input from officers of Council and consultation with the Government Architect of NSW (**GANSW**) via the State Design Review Panel (**SDRP**).
- The design process for SSDA 9831 included the review of a series of building typology models and the detailed consideration of two concept design approaches. The review and analysis of the typologies and the initial design approach informed the urban design principles and the proposed building form.
- A detailed shadow analysis was undertaken for SSDA 9831 and the built form designed to maximise sunlight to public spaces south of the site. In particular the cantilever volume has been reduced.
- Council has confirmed that the building complies with its proposed solar access control, and therefore 4 hours of continuous sun access will reach a contiguous area of Paul Keating Park, equal to 50% of the Park's area, between 10:00am and 3:00pm on 21 June. Council formed its conclusion after reviewing Urbis (2020) *WSU Bankstown Solar Amenity Study Rev C*.
- The proposed building will contribute direct and indirect social, economic and cultural benefits to the Bankstown CBD and south west Sydney more broadly. To secure those benefits, the building must be able to accommodate all WSU's education and research requirements to ensure the campus is successful and thriving. The proposed height facilitates the provision of the required floor area.
- The perceptions of visual bulk have been mitigated by articulating the building into four distinct volumes, defined by recessed terraces and the ground floor, and distinguished by individual floor plates.
- Council's vision for The Appian Way alignment will be realised. The building's eastern façade will define the new The Appian Way alignment where it adjoins the site.
- The successful and viable university on the site meets state and local strategic objectives for the Bankstown CBD, as articulated in:
 - Greater Sydney Commission (2019) *South District Regional Plan*;
 - Council (2019) *Local Strategic Planning Statement*
 - Council (2019) *Bankstown Complete Streets*
 - Council (2020) *Canterbury Bankstown Employment Lands Strategy* (p 39)
- The proposed Bankstown campus presents an opportunity to contribute to the regeneration and activation of the Bankstown CBD as major metropolitan centre and will facilitate innovation and discovery in a dynamic and technology-enabled campus. As the largest educational provider in Western Sydney, WSU is a key driver of the region's social, cultural and economic strength.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the maximum height of buildings in accordance with clause 4.3 of BLEP.

Detailed consideration has been given to the following matters within this assessment:

- DPIE (2011) *Varying development standards: A Guide*.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. KEY QUESTIONS

Is the Planning Control a Development Standard?

The height of buildings prescribed by clause 4.3 of BLEP is a development standard capable of being varied under clause 4.6(2) of BLEP.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of BLEP.

What is the Underlying Object or Purpose of the Standard?

The objectives of clause 4.3 as set out in clause 4.3(1) of the BLEP are:

- a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- d) to define focal points by way of nominating greater building heights in certain locations.*

6.2. CONSIDERATIONS

6.2.1. Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Historically, the method of establishing if a development standard was unreasonable or unnecessary in a particular context, was to ask if the objectives of the standard are achieved, despite the non-compliance with the standard (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the question of reasonable and necessary compliance in three ways. Firstly, the *Wehbe v Pittwater Council* [2007] NSWLEC 827 method, which alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

Secondly, it considers whether the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required, with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

Finally, it seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or

inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of BLEP are detailed in **Table 4** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 – Assessment of consistency with the objectives of the building height standard

Objective	Compliance
<i>a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,</i>	<p>The proposed building is compatible with the desired character of the Bankstown CBD, which is an emerging metropolitan centre that will see several major urban renewal projects over coming years.</p> <p>The amenity of the local area has been addressed by compliance with Council’s solar access control that maximises sun into the adjoining Paul Keating Park, the definition of The Appian Way alignment sought by Complete Streets.</p> <p>The height is consistent with Bankstown DCP 2015, which describes the character of this precinct as follows:</p> <p><i>Development will generally be in the form of tall buildings to create an identifiable skyline image for the Bankstown CBD. The tallest buildings will generally locate around Paul Keating Park to define the Civic Precinct and to take advantage of the amenity provided by the park.”</i> (Part A1, page 6)</p>
<i>b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,</i>	Not applicable.
<i>c) to provide appropriate height transitions between development, particularly at zone boundaries,</i>	<p>The building converses with adjoining buildings, with the roof of the podium volume aligning with the BLaKC roof, and the mid-tower volume creating a “soft datum” aligned with the Civic Tower (see Figure 6).</p> <p>The four building volumes are progressively set back from Paul Keating Park to create a height transition between the building and the open, civic space.</p>
<i>d) to define focal points by way of nominating greater building heights in certain locations.</i>	<p>The building height is consistent with Bankstown DCP 2015, which describes the character of this precinct as follows:</p> <p><i>Development will generally be in the form of tall buildings to create an identifiable skyline image for</i></p>

Objective	Compliance
	<p><i>the Bankstown CBD. The tallest buildings will generally locate around Paul Keating Park to define the Civic Precinct and to take advantage of the amenity provided by the park."</i> (Part A1, page 6)</p> <p>The site is within the Civic Precinct. A university will complement the other substantial civic and community uses within the Precinct, but it must be viable and successful, and support a wide range of educational and research activities. The proposed height is required to achieve this end.</p> <p>The university will be a striking land mark for the Precinct, and will contribute public domain improvements.</p>

In summary, achieving compliance with the standard is unreasonable and unnecessary (clause 4.6(3)(a)) as notwithstanding the non-compliance, the development is consistent with the objectives of the standard (clause 4.6(4)(a)(ii)).

2. **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

WSU's educational design brief requirements could not be met if the control were complied with. The direct and indirect social, cultural and economic benefits associated with the university would not be realised, and its contribution to the realisation of a civic precinct would be undermined.

It is considered that Objective (d) would be undermined as a compliant building on the site would not define a 'focal point' by providing greater building height in the Civic Precinct. Instead, the compliant building combined with the adjoining Civic Tower would be perceived as a 'wall'.

The height transitions to open spaces within Paul Keating Park required by Objective (c) would not be achieved.

A comprehensive assessment of the potential environmental impacts (within the EIS and RtS) has concluded the proposal will provide a satisfactory level of amenity for the surrounding properties within the CBD. Key areas of assessment included:

- Solar access to Paul Keating Park – the building complies with Council's proposed solar access control.
- Acoustic – the potential impacts of construction and mechanical plant on adjoining properties has been assessed and appropriate mitigation measures put in place to prevent detrimental impacts.
- Heritage – both Aboriginal Cultural Heritage and European Built heritage have been assessed. No cultural connections will be impacted by the proposal and the built form will not result in impacts to the adjoining Council Chambers (local heritage item).
- Accessibility – the building provides an enhanced equitable and navigable environment for all users.
- Flood – the proposal has responded to detailed flood modelling carried out in consultation with Councils flood engineers. The proposed ground floor levels will ensure compliance with Councils freeboard requirements.
- Wind – appropriate wind mitigation has been incorporated to ensure pedestrian comfort levels are achieved in the public domain surrounding the university building, as well as within external spaces within the building. Mitigation measures include a mix of permeable and impermeable screens, landscaping and awnings.

- Traffic and transport – the proposal incorporates adequate parking for the proposed education use. Onsite parking is provided for the targeted mode share of staff and green travel plan will be prepared to encourage active transport and public transport use.
- Airport height limitations - A Controlled Activity Permit for the infringement of the Bankstown Airport Obstacle Limitation Surface (OSL) and Procedures for Air Navigation Surfaces – Aircraft Operations surface (PAN-OPs) has been issued by the Department of Infrastructure, Transport, Cities and Regional Development for both the built form and a crane during construction.

The proposal achieves the objectives of the development standard as outlined below:

- The building is compatible with the scale and character of existing and likely future development within the Bankstown CBD. It is compatible with existing buildings along Rickard Road, and has been designed to align with key elements of the adjoining BLaKC and Civic Tower. The 83m height limit is consistent with development proposals within the immediate locality that have been approved by Council and the Sydney South Planning Panel including the Compass Development and 32 Kitchener Parade.
- The building is consistent with the built form outcomes expressed within the Bankstown Development Control Plan 2015 (DCP) including:
“Development will generally be in the form of tall buildings to create an identifiable skyline image for the Bankstown CBD. The tallest buildings will generally locate around Paul Keating Park to define the Civic Precinct and to take advantage of the amenity provided by the park.” Part A1, page 6
- The ground plane will create an active interface with The Appian Way, Rickard Road and Paul Keating Park with the inclusion of retail tenancies, clear visual connections and DDA compliant access.
- The building fully complies with Council’s proposed solar access control, and the maximum floorspace control included in the draft LEP amendment that Council is currently processing, which received a Gateway Determination on 10 June 2020.

The proposal will deliver a superior planning outcome compared to a complying scheme, as it will deliver the first stage of The Appian Way alignment envisaged in Council’s Complete Streets, including a defined alignment edge, activated ground plane and improved pedestrian links that will benefit from passive surveillance.

The concept landscape design is inclusive and welcoming, including bespoke furniture that will be attractive to student, staff and university visitors, and to other community members visiting the Civic Precinct. The increase in height on the site enables the delivery of this public space, while optimising the opportunities and social, cultural and economic benefits arising from the new university.

3. The burden placed on the community (by requiring strict compliance with the height of buildings standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

Strict compliance with the building height development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community. The proposed variation will enable:

- Provision of a building that is compatible with the existing and desirable future scale and character of surrounding area;
- Protection of the amenity of Paul Keating Park through facilitating adequate sun access in mid winter, and creating an landscaped, integrated public domain interface; and
- Mitigation of potential detrimental impacts on the amenity of the adjoining properties within the CBD.

The visual impact analysis has demonstrated that the building will be consistent and compatible with the locality, including the adjoining BLaKC and Civic Tower. Its architectural design addresses a number of other design considerations, including:

- The appropriate floor plate sizes to accommodate a vertical university and all its various functions;
- Provision of high levels of accessibility and amenity within the locality;
- Maintenance of high level of solar access to public open space;
- Provision of the new alignment of The Appian Way; and
- Provision of a high standard of architectural quality, which will be an exemplar for future projects within the CBD and will make a positive contribution to the urban fabric.

An alternative proposal that complied with the maximum height of building control would result in a built form which is not able to accommodate the floor space required for a vertical university campus. This would result in a development that is contrary to the objectives of the building height control and an inferior outcome regarding the social, cultural and economic impacts.

Overall, it is considered that strict compliance with the development standards is unreasonable as an alternate scheme which complied with the height standards would result in an inferior outcome for the site and/or result in the significant loss of education floor space within the locality.

6.2.2. Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

Justice Preston is warning consent authorities and applicants against requiring or expounding ‘beneficial effects’ from other aspects of a proposal to balance out the contravention of a specific standard. He is saying this is not necessary, it is enough to consider the contravention relative to the objectives that the standard seeks to achieve. All other aspects of the proposal should be considered as if the contravention was not proposed.

In this regard it is noted that the proposed contravention of the height standard is consistent with the objectives of the standard and will result in negligible visual, shading or other impacts. Conversely, compliance with the standard would place a disproportionate burden on the community associated with the loss of the university and its social, cultural and economic benefits.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed building are outlined in detail above. These include:

- The proposal positively contributes to the site and its surrounds, achieving its vision to transform Bankstown CBD by creating a striking landmark. The proposal reflects an appropriate built form and scale that is commensurate with the vision for Bankstown CBD as expressed by the emerging scale of development on adjacent and surrounding lands. The concept will also leverage off significant investment in the current and future transport infrastructure accessible to the site, providing increased education and employment opportunities in a well serviced location.
- There will be extensive economic benefits for existing business and new business that service the new vertical campus. Direct economic benefits will be experienced through both the construction and the operations phases and local supply-chain impacts on the Bankstown CBD will be significant.
- The proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land, and promoting and delivering good design and amenity of the built environment. This is achieved through the delivery of a new educational facility and enhanced public domain to complement the existing cultural and civic facilities at Bankstown CBD.
- The proposed building achieves the objectives of the development standard prescribed in clause 4.3 of the BLEP as described through Section 6.2.1 and achieves the objectives of the B4 Mixed Use zone.
- The proposed building will have negligible material impacts compared to a compliant scheme in terms of amenity, overshadowing or view impacts.
- The proposed building has been designed to accommodate a viable and successful university, that will contribute social, cultural and economic benefits.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

6.2.3. Clause 4.6(4)(a)(i) – Has the written request adequately addressed the matters in sub-clause (3)?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.2.4. Clause 4.6(4)(a)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 4** above. The proposal is also consistent with the land use objectives that apply to the site under BLEP. The site is located within the B4 Mixed Use zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 5** below.

Table 5 – Assessment of Compliance with Land Use Zone Objectives.

B4 Zone Objective	Compliance
<i>To provide a mixture of compatible land uses.</i>	<p>The proposed educational land use is compatible with the broader range of commercial, retail, residential and recreational land uses within the Bankstown CBD.</p> <p>Local industries will benefit through increased demand for their output, particularly professional, scientific and technical services, manufacturing and administrative and support services. Local business and services will benefit from the demand the university students, staff and visitors will generate.</p>
<i>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.</i>	<p>The proposal will result in additional education and employment opportunities in the Bankstown CBD, which is easily accessible to existing and future bus and rail public transport infrastructure. Planned investment in the Sydenham to Bankstown Metro will further increase transport connectivity.</p> <p>The proposal will include a significant number of bicycle racks, bicycle storage lockers and end of trip facilities to encourage walking and cycling.</p>
<i>To maintain the role of the Bankstown CBD as a major metropolitan centre.</i>	<p>The University will contribute to Bankstown CBD's role as a major metropolitan centre, accommodating international quality tertiary education and research facilities. Students, staff and visitors to the University will contribute to the strength of the CBD as an economic driver within south west Sydney. The high-quality striking architecture of the building meets the standard anticipated for all future projects within the CBD.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of buildings standard as 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.

6.2.5. Clause 4.6(5) – Concurrence of the Planning Secretary

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

Consent authorities for State significant development (SSD) may assume the Secretary’s concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of buildings development standard and the land use zone objectives despite the non-compliance.

It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case including:

- The strategic intent outlined within state and local plans applying to the site, which identify it as a location for a university campus. The proposed floor space and height are required to accommodate teaching and research spaces, large circulation areas for students who will move constantly through the building, and additional vertical transport, stairs and building services infrastructure necessary to support a vertical campus.
- The amenity of Paul Keating Park will be maintained, if not enhanced, by landscaping and integrated public domain, the protection of sun access and management of wind.
- The significant public benefit of improvements to the public domain adjacent to the site in Rickard Road and in The Appian Way.
- Direct and indirect economic and financial benefits to existing and new commercial and retail businesses within the Bankstown CBD and Western Sydney more broadly.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

The proposal has been considered by the NSW Government Architect and design review panel on three occasions. The matters raised at those briefings have been addressed and resolved, as described in the Response to Submissions Report.

7. CONCLUSION

This Clause 4.6 variation has been prepared by Urbis Pty Ltd on behalf of Western Sydney University in support of SSD 9831. In accordance with Clause 4.6 of the BLEP 2015, the applicant recommends that compliance with the development standard is not required for this development for the following reasons:

- The proposal is compliant with clause 4.6(3)(a) because a strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the case. This is because the general objectives of clause 4.3 of the BLEP 2015 and the B4 Mixed Use Zone have been achieved.
- There are sufficient environmental planning grounds to justify contravening the development standard for maximum height of building; there will be minimal environmental impacts stemming from the contravention of development standards, especially in regard to additional bulk, overshadowing or loss of views.
- The proposed development has been designed to maximise its resultant social benefits by maximising its GFA within in the town centre whilst minimising visual bulk and maximising solar access to both Paul Keating Park and The Appian Way.
- The proposal is consistent and compatible with the strategic land use and transport policies and will deliver a substantial investment in the Bankstown CBD and more broadly in south west and western Sydney with significant construction and ongoing employment opportunities close to the growing residential population.
- The proposed floor space and height are required to accommodate teaching and research spaces, large circulation areas for students who will move constantly through the building, and additional vertical transport, stairs and building services infrastructure necessary to support a successful university campus in a CBD location.
- The variation of the development standard will not raise any matter of significance for State or Regional environmental planning.

Based on the reasons outlined above and the contents contained throughout this Clause 4.6 Request, it is considered that maintaining strict compliance with the height of building development standard would be unreasonable and unnecessary, and therefore not be in the public interest. Accordingly, it is concluded that this clause 4.6 request is well founded and that the particular circumstances of the case warrant flexibility in the application of the height of building development standard as it applies to the site.

DISCLAIMER

This report is dated 1 October 2020 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of WESTERN SYDNEY UNIVERSITY (**Instructing Party**) for the purpose of Clause 4.6 Variation Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

In preparing this report, Urbis may rely on or refer to documents in a language other than English, which Urbis may arrange to be translated. Urbis is not responsible for the accuracy or completeness of such translations and disclaims any liability for any statement or opinion made in this report being inaccurate or incomplete arising from such translations.

Whilst Urbis has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. Urbis (including its officers and personnel) is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which Urbis relies, provided that such errors or omissions are not made by Urbis recklessly or in bad faith.

This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

