

Suite 8/88 Mountain Street
ULTIMO NSW 2007

Phone: 9560 1718
www.chapmanplanning.com.au

31 October 2022

Storey & Gough Lawyers
182 George Street
Parramatta NSW 2150

Attention: Mr Andrew Gough

Property: 71-73 Thomas Street, Parramatta
Land and Environment Court Appeal: 2022/00192691
Ausino Group v City of Parramatta Council

Dear Mr Gough,

I refer to the abovementioned development application for the *boarding house development* at 71-73 Thomas Street, Parramatta and the appeal against the refusal of the development application (DA-1036/2021) to the Land and Environment Court of NSW (the Court).

In accordance with the Respondent Council's Statement of Facts and Contentions filed on 15 August 2022, the architectural plans and documentation supporting the proposal has been amended to address the contentions raised by the respondent.

This letter is a planning statement addressing the amended plans and is supported by the following amended plans and reports:

- *Architectural plans numbered DA100-DA103, DA110-DA117, DA120, DA130-DA137, DA201-207, DA300-303, DA311-313, DA401-DA402, DA411-DA413, DA501-505, DA601-DA605 Revision B, dated 6 October 2022 and 25 October 2022, prepared by VOARC,*
- *Solar Access and Shadow Diagrams numbered DA151-157, DA161-DA163, DA171-DA174, Revision B dated 25 October 2022 prepared by VOARC,*
- *Landscape Plans numbered DA121-1213, Revision B, dated 6 October 2022 prepared by Topio Graphica Landscape Architecture,*

- *Hydraulic Detail Plan numbered 2021409, sheets H01-H04, Revision 2, dated 2 November 2021 prepared by ANAcivil,*
- *Geotechnical Report dated 17 May 2022 prepared by Geofirst, and*
- *Clause 4.6 Request – Height of Buildings dated 27 October 2022 prepared by Chapman Planning Pty Ltd – **Annexure 2.***

The following summarises the amendments to the architectural plans, with a revised development control table provided at **Annexure 1** of this letter which contains an assessment of the amended plans in accordance with the provisions of SEPP-ARH 2009, the Parramatta LEP 2011 and Parramatta DCP 2011.

The amendments to the architectural plans are summarised as follows:

- Reduction in total number of rooms to 68 x boarding rooms (including 16 x double rooms, 7 x accessible/double rooms, and 45 x single rooms), and associated changes to parking to 34 x car spaces (including 4 x accessible spaces), 24 x bicycle spaces, and 14 x motorcycle spaces.
- Gross Floor Area calculations have been amended to include circulation areas enclosed by two walls. The common circulation areas which have been excluded from the GFA calculation are unenclosed external areas.
- Increased setback to the eastern boundary of the site – Pemberton Street frontage of 3m at Ground Floor – Level 2, and increased setback to the western boundary of the site to 3m-6m.
- The upper-most level of the development (Level 04) has been reduced in scale, with an increased setback from the northern boundary – Thomas Street of 9.772m measured to roof above communal terrace and 15.652m measured to lift and stair core.
- Increase in deep soil area across the development from 323.3m² & 19.8% of the site to 481m² & 29.6% of the site, including planter box areas with soil depth >1m. An addition 230.9m² of impervious open space including recreation areas/communal open space and landscaping is provided.
- Amended basement parking layout to meet requirements of AS2890.1-2004, including relocation of pedestrian pathway, widening of basement ramp and changes to ramp gradient, increased width of waiting bay, and reconfiguration of parking spaces layout.

The following addresses the Contentions at Part B of the Statement of Facts and Contentions filed with the Court on 15 August 2022.

Part B: Contentions

B1 – Contentions that warrant the refusal of the application by the Court

Contention 1 – Aims of PLEP 2011

Particulars (a) – (b): The amended built form is consistent with the desired future character of the locality being within an R4 High Density Residential zone. In particular, the amended proposal presents a building envelope that is compatible with the form and scale envisioned by the planning controls for the surrounding locality, which includes the recently approved 3-4 storey residential flat building at 55-57 Thomas Street, Parramatta west of the subject site.

Aim 1.2(2)(h) of the Parramatta LEP 2011 is to “enhance the amenity and characteristics of established residential areas”. In this instance, the subject site and surrounding locality on the southern side of Thomas Street is contained within an R4 High Density Residential zone, and the development is consistent with the anticipated form of development in the locality being higher density development increasing in height and scale from Thomas Street, towards Broughton Street to the south and the B4 Mixed Use zone along Morton Street to the south-west.

Whilst the site is located at a zone interface opposite an R2 Low Density- and R3 Medium Density Residential zones north of Thomas Street, the amended proposal provides a three storey form at the Thomas Street elevation, thereby presenting a suitable transition to the Low Density zone and a built form scale and height that is consistent with the planning controls for the site and established by Council as being suitable at this zone interface.

Contention 2 – Height and Number of Storeys

Particulars (a) – (f): The amended proposal has a reduced building height of three storeys at the northern elevation – Thomas Street frontage, and eastern elevation – Pemberton Street, with the upper-most level of the development designed in a recessed form to contain accessible rooms and communal open space.

The height of the amended proposal, and resultant built form is consistent with the envisioned future character of development along the southern side of Thomas Street and to the south of the site as depicted in the 3D perspective models – Plan DA504 prepared by VOARC. The perspective models depict indicative built forms for the adjacent properties surrounding the site, consistent with the 11m height control which applies to these properties.

The elements of the proposal above the height control at the central and rear portions of the site contribute to a suitable visual transition between the subject site and southern adjoining property which is subject to a 14m height control pursuant to Clause 4.3 of the PLEP 2011. As the southern adjoining property at 28-30 Broughton Street is developed in accordance with the planning controls – 14m height control, the proposal will present an appropriate height transition to the adjoining property to the south.

The model confirms that the development will sit comfortably within the Thomas Street and Pemberton Street streetscapes as the surrounding properties are developed in accordance with the zoning of the land.



Source: 3D Perspective Plan DA504 prepared by VOARC

Further, the proposal is consistent with the built form of nearby recently approved, but not yet constructed residential flat buildings at 55-57 Thomas Street, and 53A Thomas Street, Parramatta. The approved development under DA/42/2021 at 55-57 Thomas Street has a 3-4 storey form with recessed communal open space and rooftop terrace at the upper-most level. The central and southern portions of this development present a four storey form resulting from the topography of the land which has a fall from Thomas Street to the south towards the Parramatta River. The proposed development therefore presents a similar height and number of storeys to that recently approved under DA/42/2021, within a similar site context.

In the site context, the height of the proposal is acceptable presenting a well-defined built form – corner element at the south-western corner of the intersection of Thomas Street and Pemberton Street.

Particulars (g) – (h): An amended Clause 4.6 variation request prepared by Chapman Planning at **Annexure 2** has been submitted addressing the amended plans. The written request

confirms that compliance with the height standard contained within Clause 4.3 of the LEP is unreasonable and unnecessary in the site circumstances, and details the environmental planning grounds which justify contravention to the standard.

Contention 3 – Floor Space

Particulars (a) – (i): The amended plans include updated gross floor area (GFA) calculations that include circulation areas enclosed by two walls. The common circulation areas which have been excluded from the GFA calculation are unenclosed external areas.

Particulars (j) – (k): The amended proposal has a total GFA of 2,084.8m², resulting in a total FSR of 1.28:1. Pursuant to Clause 29(1)(c)(i) of SEPP-ARH 2009 the proposal is subject to an FSR bonus of 0.5:1, increasing the permissible FSR on the site to 1.3:1 – 2,115m². The proposal has an FSR of 1.28:1 and therefore complies.

Contention 5 – Character of the local area

Particulars (a) – (g): The proposed development has been amended with a reduced scale at the upper-most level, and presents a three storey form to the Thomas Street and Pemberton Street frontages of the site. The proposal is compatible with the character of the local area, being consistent with the envisioned scale of development for the R4 High Density Residential zone on the southern side of Thomas Street and compatible the character of the local area based on the following:

- The proposed height at the primary street frontage – northern boundary is three storeys which presents a suitable scale at the zone interface between the R2 Low Density Residential zone north of Thomas Street, and R4 High Density Residential zone on the southern side of Thomas Street. The height at the Pemberton Street frontage – three storeys is stepped with the topography of the site, and as such the scale of the development is compatible with the character of surrounding development achieving the envisioned height for development under the LEP at its street elevations.
- Whilst the immediate locality contains a diverse range of building forms including single storey dwellings and two storey townhouses, the contemporary apartment and mixed use developments of 6-7 storeys along Broughton Street south of the site form part of the site's visual catchment as depicted in the below photograph. These buildings are indicative of the envisioned character of development within the R4 zone south of Thomas Street, and the proposal will be consistent with the character of these buildings when viewed within the Pemberton Street streetscape.



Source: Google Maps

- The proposal in its amended form is consistent with the built form of nearby recently approved, but not yet constructed residential flat buildings at 55-57 Thomas Street, and 53A Thomas Street, Parramatta. The approved development under DA/42/2021 at 55-57 Thomas Street has a 3-4 storey form with recessed communal open space and rooftop terrace at the upper-most level, that is consistent with that proposed on the subject site. Council, in approving these recent development applications, acknowledges the anticipated form of development within the zone and has established a precedent with respect to the acceptable storey heights within the vicinity of the site.
- The planning principle in *Project Venture Developments Pty Ltd v Pittwater Council* can be used as a reference in determining the compatibility of the proposal against the character of the local area. In the *Project Venture* matter it was accepted that buildings can exist together in harmony without having the same density, scale or appearance. In this instance, the proposed development in its amended form will be compatible with surrounding development through a three storey form at the street wall elevations and recessed upper levels.

Particulars (h) – (i): The amended proposal has considered the building envelope controls which apply to residential flat buildings under Section 3.1.3 of the PDGP 2011, and provides a primary street setbacks of 5-5.6m at the Thomas Street frontage that is consistent with the prevailing setback along this frontage. The amended proposal has an increased setback to the secondary street frontage of 3m to Pemberton Street being consistent with the setback controls for flat buildings within Table 3.1.3.6 of the DCP. Further, landscaped and deep soil areas across the site have been increased as part of the amended proposal, including podium

L.71-73thomasst.Parramatta.Contentionresponse.31.10.22

landscaping at a soil depth of at least 1m. The amended proposal meets the landscape requirements of Clause 29(2)(b) of SEPP-ARH 2009 which prevails in the case of inconsistency with the landscape controls contained within the PDCP 2011. The proposal provides a landscaped area of 5m-5.6m consisting of deep soil area and planter box area presenting a landscaped front setback that is compatible with the streetscape – adjoining properties to the west.

Particular (j): The setback of the development to Pemberton Street has been increased to 3m to comply with the secondary street setback requirement contained within Table 3.1.3.6 of PDCP 2011. The 3m setback is consistent with the building alignment of the southern adjoining development at 28-30 Broughton Street, Parramatta.

Particulars (k): As detailed previously, the landscaped and deep soil areas across the site have been increased as part of the amended proposal, and the development meets the landscape requirements of Clause 29(2)(b) of SEPP-ARH 2009 which prevails in the case of inconsistency with the landscape controls contained within the PDCP 2011. The proposal provides a landscaped area of 5m-5.6m consisting of deep soil area and planter box area presenting a landscaped front setback, that is compatible with the streetscape – adjoining properties to the west.

Contention 6 – Accessibility

The number of accessible and adaptable rooms is reduced as a result of the reduction in rooms within the amended development. The architectural plans have been amended in response to the particulars of this contention and an Access Report will be provided to support the amended proposal based on in-principle support of the amended design.

Contention 7 – Parking

The amended architectural plans prepared by VOARC and amended Traffic and Parking Impact Assessment prepared by *ANACivil* address the particulars of this contention with respect to basement parking layout and design.

Contention 8 – Stormwater Drainage

The amended Stormwater Management Plans prepared by *ANACivil*, address the particulars of this contention.

Contention 9 – Inadequate Information

Particulars (a) – (b): Swept path diagrams are submitted demonstrating that B99 vehicles can enter and exit the site in a forward direction.

Particular (c): A geotechnical report prepared by *Geofirst* is submitted which supports the proposed basement excavation and addresses the matters raised in this particular.

Particular (d): Amended Stormwater Management Plans prepared by *ANACivil* are submitted which correctly label stormwater tanks.

Contention 10 – Public Interest

The development proposal is in the public interest as it is consistent with the objectives of the R4 High Density Residential Zone, and applicable planning controls contained within SEPP-ARH 2009 and the Parramatta LEP and DCP. The proposal is of a bulk and scale that is envisioned for development in the R4 High Density Residential zone, and is consistent with recently approved residential flat buildings to the west of the site at 55-57 Thomas Street, Parramatta.

The proposal does not result in significant unreasonable amenity impacts beyond that anticipated within a locality undergoing transition in built form to higher density residential development according to zone. The development contributes to the provision of affordable housing within close proximity to services including nearby Parramatta CBD, and within walking distance of Western Sydney University – Parramatta Campus. The site is within close proximity to well-serviced bus routes along Macarthur Street to the west of the site.

If you require clarification of the issues addressed in this letter, please contact Chapman Planning on 9560 1718.

Regards,



Garry Chapman
Director
[Chapman Planning Pty Ltd](#)

Annexure 1 – Development Control Table

Annexure 2 – Clause 4.6 Request – Height of Buildings

ANNEXURE 1 – Development Control Table

| SEPP – Affordable Rental Housing 200 | Original Proposal | Amended Proposal | Control | Compliance |
|---|---|---|--|--|
| Floor Space Ratio | 1.26:1 and 2,054.9m ² <i>(Note: Contention 3 has included breezeways as GFA)</i> | 1.28:1 and 2084.80m ² | 0.8:1 + 0.5 bonus 1.3:1 2,115m ² | Yes |
| Building Height | 14-14.4m | 14.5m (Level 4 roof form) 14.2m (Lift overrun) | 11m | *Note: Updated clause 4.6 submitted |
| Landscape Area | Landscape areas to Thomas Street and Pemberton Street | 5m-5.6m Landscaped front setback (Thomas Street) 2.3m-3m Landscaped secondary street frontage (Pemberton Street) | Compatible with streetscape | Yes |
| Solar Access | Communal room at ground level receives 3 hours of solar access in midwinter | Communal room at ground level receives 3 hours of solar access in midwinter | 3 hours to communal room | Yes |
| Private Open Space | Communal: 159.7m ² and 3m dimension | Communal: 305.3m ² and 3m dimension | 20m ² with minimum dimension of 3m | Yes |
| | Manager: 19.4m ² | Manager: 19.4m ² | 8m ² and minimum dimension 2.5m | Yes |
| Parking | 36 spaces | 34 spaces | 0.5 car spaces for each room | Yes |
| | Motor cycle – 15 spaces | Motorcycle – 14 spaces | Rooms – 68 = 34 spaces | Yes |
| | Bicycle - 15 spaces | Bicycle – 24 spaces | Motorcycle and Bicycle space per 5 rooms = 13.6 (15) | |
| Communal Room | Communal Room Ground – 28.2m ² Level 3 – 99.4m ² | Communal Room Ground – 28.2m ² Level 3 – 26.2m ² | 5 or more rooms | Yes |
| Minimum Room Size <i>Excluding kitchen and bathroom</i> | Single rooms – 14.2m ² – 15.3m ² Double Room – 17.4m ² – 24.8m ² | Single rooms – 14.2m ² – 15.2m ² Double Room – 17.4m ² – 24.3m ² | Single: 12m ² Double: 16m ² | Yes |

| | | | | |
|---|---|---|--|-------------------------------------|
| Maximum Room Size <i>Excluding kitchen and bathroom</i> | 24.8m ² | 24.8m ² | 25m ² | Yes |
| Maximum Number of Lodgers | Max. 2 lodgers per room | Max. 2 lodgers per room | No more than 2 lodgers in each room | Yes |
| Adequate Facilities | Private kitchen and bathroom facilities | Private kitchen and bathroom facilities | Adequate bathroom and kitchen facilities | Yes |
| On-site Manager | Manager's room at Room G06 | Manager's room at Room G06 | Required 20+ lodgers. | Yes |
| Parramatta LEP 2011 | | | | |
| Height | Maximum 14m-14.4m | 14.5m (Level 4 roof form) 14.2m (Lift overrun) | 11m | *Note: Updated Clause 4.6 submitted |
| Floor Space Ratio | 1.26:1 and 2,054.9m ² <i>(Note: Contention 3 has included breezeways as GFA)</i> | 1.28:1 and 2084.80m ² | 0.8:1 + 0.5 bonus 1.3:1 2,115.1m ² | Yes |
| Parramatta DCP | | | | |
| 5.1.4 Planning Controls for Boarding Houses | | | | |
| Location Criteria | Site within close proximity of WSU, Parramatta CBD, and nearby mixed-use development. | Site within close proximity of WSU, Parramatta CBD, and nearby mixed-use development. | Boarding house to be close to services. | Yes |
| Building Envelope Controls | Development designed in form of RFB. | Development designed in form of RFB. | Building envelope controls Section 3.1.3 of DCP Residential flat building controls apply | Yes |
| Occupation requirements | 1 – 2 lodgers per room | 1 – 2 lodgers per room | Maximum 2 lodgers per room | Yes |
| Operational Management | On-site boarding house manager provided | On-site boarding house manager provided | On-site manager | Yes |
| Minimum size and Design for bedrooms | Single rooms – 14.2m ² – 15.3m ² Double Room – 17.4m ² – 24.8m ² | Single rooms – 14.2m ² – 15.2m ² Double Room – 17.4m ² – 24.8m ² | Single 12m ² + ensuite 16m ² Two person – 16m ² + ensuite 19m ² Kitchenette – 2m ² Storage – Minimum 1m ³ | Rooms meet SEPP-ARH provisions |

| | | | | |
|----------------------------------|--|---|---|---|
| Managers room | 14.8m ² | 14.8m ² | 16m ² | Note: Manager's room is a single room consistent with SEPP-ARH room provisions |
| Maximum room size | 24.8m ² | 24.3m ² | 25m ² | Yes |
| Kitchen/Dining Facilities | Communal room and alfresco living/dining area at Level 3 provided with kitchen facilities and sized >101m ² | Communal terrace areas provided with BBQ facilities | Communal kitchen and dining area – 20m ² + 1m ² per resident over 12 residents. Total residents – 93 Communal kitchen – 20m ² + 81m ² = 101m ² | Yes |
| Laundry | Laundry facilities provided within each boarding room. | Laundry facilities provided within each boarding room. | 1 washing machine + 1 washing machine for every 12 residents Drying area/facilities | Yes |
| Communal Living area | Communal Alfresco Area Ground – 69.2m ² Level 1 – 28.2m ² Level 3 – 99.4m ² | Communal Alfresco Area Ground – 120.4m ² Level 3 – 66.4m ² Level 4 – 118.5m ² | 20m ² + 1.5m ² per resident exceeding 12 persons Communal living – 20m ² + 121.5m ² = 141.5m ² Minimum dimensions of 4m ² Location: Communal living area/s must be located on the ground floor and are to be located near commonly used spaces or adjacent to the communal outdoor open space. An additional communal living area shall be provided on each level for multi-storey | Note: Communal rooms provided throughout development and meet the area requirement. |

| | | | | |
|---|--|--|--|---------|
| | | | Class 3 level boarding houses. | |
| Communal Outdoor Area | Communal: 159.7m ² and 3m dimension | Communal: 305.3m ² and 3m dimension | Minimum area – 20m ² minimum dimension 3m | Yes |
| Private Open Space | Manager Terrace: 19.4m ² | Manager Terrace: 19.4m ² | Manager: 8m ² minimum dimension 2.5m | Yes |
| Accessibility | Access report submitted with application | Access report submitted with application | All new boarding houses (including building conversions or additions to existing premises) should comply with the minimum access requirements contained within the BCA and AS 1428.1 – Design for Access and Mobility. | Yes |
| Sustainability, Energy Efficiency Solar Access | BASIX Certificate submitted with application | BASIX Certificate submitted with application | All development applications for new boarding house developments (including substantial alterations and additions) must be accompanied by a BASIX Certification | Yes |
| Waste Management | Waste storage area provided at Level 1 | Waste storage area provided at Level 1 | Class 3 buildings (over 12 residents or 300m ²) must provide waste storage in accordance with requirements for Class1(b) buildings, for up to 12 residents, with an additional capacity of 40 litres waste storage and 40 litres recycling storage per person over 12 persons. | Yes |
| 3.1 Preliminary Building Envelope | | | | |
| Residential Flat Buildings | | | | |
| Height | 14m-14.4m | 14.5m (Level 4 roof form) | 11m – 3 storeys | *Note 1 |
| | 3 storey street wall | 14.2m (Lift overrun) | | |

| | | | | |
|-------------------------------|---|---|---|---|
| | | 3 storeys to Thomas Street with recessed upper levels | | |
| Floor Space Ratio | 1.26:1 and 2,054.9m ² | 1.28:1 and 2084.80m ² | 0.8:1 – 1301.6m ² | Note: Bonus Provision at clause 29 of SEPP – ARH 2009 applies |
| Site Frontage | Thomas Street: 36.18m Pemberton Street: 45.75m | Thomas Street: 36.18m Pemberton Street: 45.75m | 18m for site with 2 street frontages | Yes |
| Setback | | | | |
| Front Secondary street | 5m – 5.6m 3.1m – 3.5m | 5m – 5.6m 3m – 4.9m | 5m – 9m 3m – 5m | Yes Yes |
| Side Setbacks | West: 3m / Non habitable 6m / Habitable | West: 3m / Non habitable 6m / Habitable | Part 3F – ADG Habitable 6m Non-habitable 3m | Yes |
| Rear Setback | 5.62m – 6.01m | 6.15m – 9.65m | 15% of length = 6.75m | *Note 2 |
| Deep Soil Zone | 323.3m ² & 19.8% | 481m ² & 29.6% | Minimum 30% at least 50% located at rear 30% - 488.1m ² | *Note 3 |
| Landscape area | 437m ² & 27.2% | 535.1m ² & 32.9% | 40% - 650.8m ² | SEPP-ARH Landscape provisions met |

Note 1: The height of the amended proposal, and resultant built form is consistent with the envisioned future character of development along the southern side of Thomas Street and to the south of the site as depicted in the 3D perspective models – Plan DA504 prepared by VOARC. The perspective models depict indicative built forms for the adjacent properties surrounding the site, consistent with the 11m height control which applies to these properties.

The elements of the proposal above the height control at the central and rear portions of the site contribute to a suitable visual transition between the subject site and southern adjoining property which is subject to a 14m height control pursuant to Clause 4.3 of the PLEP 2011. As the southern adjoining property at 28-30 Broughton Street is developed in accordance with the planning controls – 14m height control, the proposal will present a height and scale consistent with the adjoining property to the south.

Note 2: The amended proposal has an increased rear setback, reducing the extent of the previously proposed variation to the required rear setback for flat building development – 15% of site depth. The proposed variation is considered acceptable in the site circumstances with the proposed setback able to accommodate adequate landscaped area and communal open space to

provide visual separation between the subject site and rear adjoining property, as well as future higher density development on the southern adjoining property with respect to ADG separation requirements. The minor variation is acceptable in this regard.

Note 3: Landscaped and deep soil areas across the site have been increased as part of the amended proposal, including podium landscaping at a soil depth of at least 1m. The amended proposal meets the landscape requirements of Clause 29(2)(b) of SEPP-ARH 2009 which prevails in the case of inconsistency with the landscape controls contained within the PDGP 2011. The proposal provides a landscaped area of 5m-5.6m consisting of deep soil area and planter box area presenting a landscaped front setback that is compatible with the streetscape – adjoining properties to the west.

27 October 2022

Updated Clause 4.6 Variation to Development Standard

Property Description: 71-73 Thomas Street, Parramatta

Development: Boarding House

Development Standard: Height of Buildings

Introduction

This is a clause 4.6 variation to support the development proposal for a boarding house development at 71-73 Thomas Street, Parramatta.

The application is made under SEPP – Affordable Rental Housing, with Clause 29(2)(a) of the SEPP applying to building height. Clause 29 is a standard that cannot be used to refuse consent. Clause 29(4) states that “*a consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2)*”.

Pursuant to clause 29(4) of the SEPP a clause 4.6 variation request is not required for a variation to the building height control in the LEP. This is consistent with paragraph 48 of the Land and Environment Court judgement *193 Liverpool Road Pty Ltd v Inner West Council* [2017] NSWLEC 13. Notwithstanding, this clause 4.6 variation request is submitted without prejudice.

This clause 4.6 request seeks to contravene the 11m building height development standard contained in clause 4.3 – Height of Buildings of the *Parramatta Local Environmental Plan 2011*.

The development proposal has a maximum height of 14.5m measured from existing natural ground level to top of roof form – Level 4 and a maximum height of 14.2m measured to the top of lift overrun. It is noted that the proposed development has been designed to conform to the topography of the site, and due to additional density afforded by the provisions of SEPP-ARH (FSR bonus) additional building bulk has been located in recessed upper levels central to the building form, with the street elevations otherwise designed with a 3 storey street wall as envisioned by the planning controls – Parramatta LEP & DCP.

The portions of the building exceeding the 11m height control are the upper portion of Level 4 (maximum height of 14.5m), lift overrun (14.2m), and roof parapet at the rear of

Level 3 (11.8m). The numerical variation is 0.8m – 3.5m being 7.2% - 31.8% from the standard.

The maximum building height is measured from the natural ground level extrapolated from land surrounding the existing building footprint on the site, noting the existing dwelling at 73 Thomas Street, Parramatta contains an excavated lower garage level and paved rear setback at the south-eastern corner of the site which distorts the maximum building height plane when compared to the natural topography of the site.

The extent of the variation is shown on the section plan extracts below.



Figure 1: Section drawing extracts indicating height variation based on natural ground level (**Source:** VOARC)

The request to contravene the development standard for the building height has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and

6. *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b) and 4.6(4)(a)(ii))
5. Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed boarding house development achieves the objectives of the height of buildings standard, notwithstanding non-compliance with the standard.

• **Objectives of the Height of Buildings Development Standard**

The objectives of the development standard are at clause 4.3(1) of the LEP as follows:

- (a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) *to require the height of future buildings to have regard to heritage sites and their settings,*
- (d) *to ensure the preservation of historic views,*
- (e) *to reinforce and respect the existing character and scale of low density residential areas,*
- (f) *to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*

The proposed development achieves the objectives of Clause 4.3 of the LEP based on the following assessment:

Objective (a) – The subject site is located at the periphery of the R4 High Density Residential zone north of the Parramatta River, and adjoins land identified for development to a maximum height of 14m-40m to the south. The development proposal presents a 3 storey built form at the street elevations that is generally consistent with the 11m height control, with the varying elements – upper levels being located at central to the site and recessed from the floors below.

The immediate locality is currently undergoing a transition to higher density development according to zone, with the proposed variation being suitably located on the site and designed to mitigate its visual impact upon the surrounding locality. The development will sit comfortably within the streetscape as the adjoining land is developed in accordance with the envisioned planning controls – 11m and 14m height control and presents a suitable transition in built form from the lower density zoned land to the north, and taller building heights envisioned for development to the south.

The proposed height variation resulting from the upper-most level is suitable for the site with respect to development intensity being concentrated central to the site, with the development otherwise presenting a strong corner element to the intersection of Thomas Street and Pemberton Street – higher part of the street, with an appropriate transition in built form south of the site.

Objective (b) – The proposal will not result in a significant adverse impact upon views/outlook from surrounding properties beyond that anticipated within the R4 High Density Residential zone. The height variation is confined to the upper-most portion of the upper level of the building, lift overrun, and minor portion of the roof parapet and these elements will not obstruct any sightlines towards significant icons and would not impact views towards heritage items.

Further, the variation does not result in any unreasonable adverse solar access impacts upon the southern adjoining property, with solar access to living room and private open space areas retained to different parts of the dwellings throughout the day. It is noted that the southern adjoining development is uncharacteristic of the R4 High Density Residential zoning of the land, and in time will be developed in accordance with the height and density controls which allow for more intense development of this site. The proposal will not result in significant overshadowing impacts upon a future residential flat building on this property with respect to the requirements of SEPP 65 – ADG.

Objective (c) – The subject site is not a heritage item and does not adjoin a heritage item or heritage conservation area.

Objective (d) – The proposal will not impact upon any historic views over the subject site.

Objective (e) – The proposal has been designed with a 3 storey street wall with recessed upper levels with the proposal complying with the 11m height control at the northern elevation – Thomas Street being the interface of the site with the R2 Low Density Residential zone to the north. In this regard, the development is consistent with the envisioned form for development on the site at the zone

interface with the variation and recessed upper level otherwise not impacting upon the low density character of the adjacent R2 zone to the north.

Objective (f) – The proposal will not impact upon solar access to commercial centres or key areas of the public domain.

It is unreasonable and unnecessary to require compliance with the height of buildings development standard due to the following reasons:

- It is unnecessary to require compliance with the standard as the elements of the building which exceed the height standard are recessed from the street elevations below and in this case will not result in any significant adverse visual impacts upon adjacent properties or the public domain with respect to view loss, overshadowing, or visual privacy.
- The elements above the height control are partly the result of additional building density afforded to the development under the FSR bonus provisions of the SEPP-ARH, and do not present an unreasonable increase in development density beyond that envisioned for development in the zone by the SEPP. It is unreasonable to require compliance as the proposed height variation will not result in a development that is uncharacteristic of nearby higher density development and the envisioned character of the zone. The height and scale presented by the proposal is consistent with that recently approved by Council under DA/42/2021 – 4 storey residential flat building at 55-57 Thomas Street presenting a variation of 25.4% from the 11m height standard.
- The height is suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the R4 High Density Residential zone. The proposed development will contribute to the provision of residential accommodation within the zone, being affordable rental housing in close proximity to well-serviced bus stops, Western Sydney University, and the Parramatta CBD. It is unnecessary to require compliance with the height standard within the site context, as the proposed variation will not result in significant bulk and scale impacts and will not set a precedent for future increased densities within the locality beyond that envisioned for the zone.

In accordance with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the development meets the first test because compliance with a development standard is unreasonable or unnecessary as the objectives of the development standard are achieved notwithstanding the non-compliance.

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a

written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 11m height standard pursuant to the *Parramatta Local Environmental Plan 2011* is partly the result of the topography of the subject site which has a cross-fall from the front boundary (north-western corner) to the rear of the site (south-eastern corner) of approximately 5.3m. The development otherwise is designed so that the built form is within the 11m height control at the street elevations with a recessed upper level.
- The proposal achieves the objectives for the high density residential zone and the resultant form and scale of the amended proposal will sit comfortably within the streetscape as surrounding sites are developed in accordance with the envisioned form of development for the zone.
- The portion of the building exceeding the height standard will not be visually intrusive upon the public domain being central to the building footprint and in this case, the building form is suitable for the subject site and compatible with the planning objectives and intended outcomes of the objectives of the R4 – High Density Residential zone. The elements which do not comply with the height standard will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook to the adjoining properties beyond those anticipated for development giving effect to the increased densities envisioned for the zone.
- The variation to the height limit confined to the upper portion of Level 4 and lift overrun provides a better planning outcome by providing equitable access to rooftop communal open space, and weather protection to this common area.
- The height and scale presented by the proposal is consistent with that recently approved by Council under DA/42/2021 – 4 storey residential flat building at 55-57 Thomas Street presenting a variation of 25.4% from the 11m height standard. The approved development under DA/42/2021 at 55-57 Thomas Street has a 3-4 storey form with recessed communal open space and rooftop terrace at the upper-most level. The central and southern portions of this development present a four storey form resulting from the topography of the land which has a fall from Thomas Street to the south towards the Parramatta River. The proposed development therefore presents a similar height and number of storeys to that recently accepted by Council, within a similar site context.
- The variation supports a boarding house development containing 68 x affordable boarding rooms that will contribute to the provision of affordable housing within the locality consistent with the objectives of the Greater Sydney Region Plan. The site is within walking distance of Western Sydney University and within close proximity to well-serviced bus stops and the Parramatta CBD

which confirms the site is within a suitable location with respect to the provision of affordable rental housing.

- The proposed development meets the relevant aims of the *Parramatta LEP 2011* as follows:
 - 1.2.2(a) – The proposed development will contribute to a range of housing to meet the needs of the residents of Parramatta, being affordable rental housing within close proximity to well-serviced bus stops along Macarthur Street, Western Sydney University and the Parramatta CBD. The proposed affordable rental dwellings (68 x boarding rooms) include a mix of accessible, single and double rooms, which will serve to meet the varied housing needs of the locality.
 - 1.2.2(d) – The proposed development is located within walking distance of well-serviced bus stop on Macarthur Street and Victoria Road, and is within close proximity of the Parramatta River which provides walking and cycle paths.
 - 1.2.2(h) – The proposal has been designed with a 3 storey street wall height at the Thomas Street elevation with recessed upper levels to present a suitable form at the interface of the site with the low density residential zone to the north. The development will not otherwise have an adverse amenity impact upon this zone.
 - 1.2.2(m) – The proposal contributes to affordable rental housing within close proximity to the Parramatta CBD and contributes to its viability as it continues to grow into the pre-eminent centre of the Central City District Plan as envisioned by The Greater Sydney Region Plan.
 - 1.2.2(n) – The proposal is accompanied by a BASIX Certificate confirming the development meets the State Government's energy efficiency targets with respect to building performance. Further, the development has been designed to maximise solar access to boarding rooms to maximise natural light and reduce the need for heating.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated.

The relevant items in Clause 4.6(3) of the LEP have been adequately addressed above in order to enable the consent authority to form the requisite opinion of satisfaction.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed boarding house development is in the public interest because it is consistent with the objectives of the applicable height of buildings standard and the objectives for development in the R4 High Density Residential zone in accordance with the planning assessment provided as follows:

- **Objectives of the R4 – High Density Residential Zone**

The objectives of the R4 – High Density Residential zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.*
- *To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood..*

The development proposal meets the applicable objectives of the high density zone based on the following assessment:

- The proposed boarding house has been designed to meet the housing needs of the community noting the demand for affordable housing. The building form is compatible with a high density residential environment with the building presenting a scale that conforms to the topography of the subject site, and is consistent with recently approved development along Thomas Street;
- The proposal contributes to the range of housing types within the locality and the amenity impacts are acceptable in the high density residential zone;
- The proposed boarding house is within close proximity to public transport including bus services within walking distance of the site along Macarthur Street which connect the site to Parramatta CBD and railway station. The development provides additional dwellings within close proximity to the CBD and associated services and employment.

- The boarding house provides for a good level of amenity for residents given the ample room sizes, sufficient communal areas, and providing appropriate levels of on-site parking. The proposal allows residents to carry out a range of activities in both their rooms and communal areas.

In addition to the above reasons, the proposal is also in the public interest because:

- The development proposal presents a 3-storey elevation to the streetscape with recessed upper levels and the proposed built form will not present unreasonable bulk and scale impacts to the public domain or adjoining properties,
- The building is an articulated/contemporary built form that is a suitable built form – height for this site that is consistent with the context and scale of other development in the locality, providing a good transition from development to the north to higher density development to the south of the site along Broughton Street,
- The development has been designed to conform to the topography of the site, with the street elevations designed to comply with the 11m height standard consistent with the envisioned character of development within the zone. The additional building density afforded to the development through the FSR bonus provisions of SEPP-ARH has been suitably located central to the site – street corner and recessed from the floors below to mitigate its impact upon the surrounding properties.
- The variation to the height standard is the result of providing affordable rental housing – boarding rooms in accordance with the density provisions of the SEPP-ARH and will contribute to rental accommodation in the locality within close proximity to well-serviced bus stops, Western Sydney University, and Parramatta CBD.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R4 – High Density Residential zone under the *Parramatta Local Environmental Plan 2011*.

The variation to the 11m building height standard is confined to the central portion of the upper level, lift overrun and minor portion of the roof parapet at the rear of the development with these elements recessed from the street elevations of the development. The proposal does not attempt to affect the intended planning outcome for the locality, rather the works are consistent with the envisioned scale and form of development planned for the site.

For these reasons, the proposal and the variation does not undermine the integrity of the building height development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*
- a) The proposal is not likely to raise any matter of significance for State or regional environmental planning. The proposal is in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R4 – High Density Residential zone.
 - b) The public benefit of maintaining the development standard is not considered significant because the building is consistent with the objectives of the 11m height standard contained in *Parramatta Local Environmental Plan 2011*.

The variation to the 11m height standard will not be visually dominant from the public domain or generate unreasonable additional overshadowing or amenity impacts upon adjoining properties.

- c) The proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

Conclusion

The development proposal presents a variation to the 11m building height control contained in Clause 4.3 of the *Parramatta LEP 2011*; notwithstanding, the proposal has been designed with a built form that is consistent with the intent of the height standard and is suitable for the subject site.

The variation to the building height standard is a result of the upper portion of Level 4 (maximum height of 14.52m), lift overrun (14.2m), and roof parapet at the rear of Level 3 (11.8m). The numerical variation is 0.8m – 3.5m being 7.2% - 31.8% from the standard. The variation does not attempt to affect the planning outcome for the broader locality rather the proposed building height is consistent with the scale and form of development planned for the locality and existing development in the locality providing an appropriate transition from lower density development to the north and higher density development to the south fronting Broughton Street.

The variation will not impact upon the public domain or adjoining properties and will not generate unreasonable overshadowing or amenity impacts. The proposed variation is the result of the topography of the site which has a fall from the northern boundary to the southern boundary, as well as the result of additional density afforded to the development being for a boarding house subject to the FSR bonus provisions of SEPP-ARH.

The application to vary the 11m building height development standard pursuant to *Parramatta Local Environmental Plan 2011* is well founded and as addressed above, the proposed height meets the objectives of the building height development standard. The proposal achieves an acceptable design that does not result in unreasonable visual and amenity impacts (overshadowing) upon surrounding properties and is a desirable outcome in terms of built form for the site and locality.

In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the building height can be supported.

Chapman Planning Pty Ltd