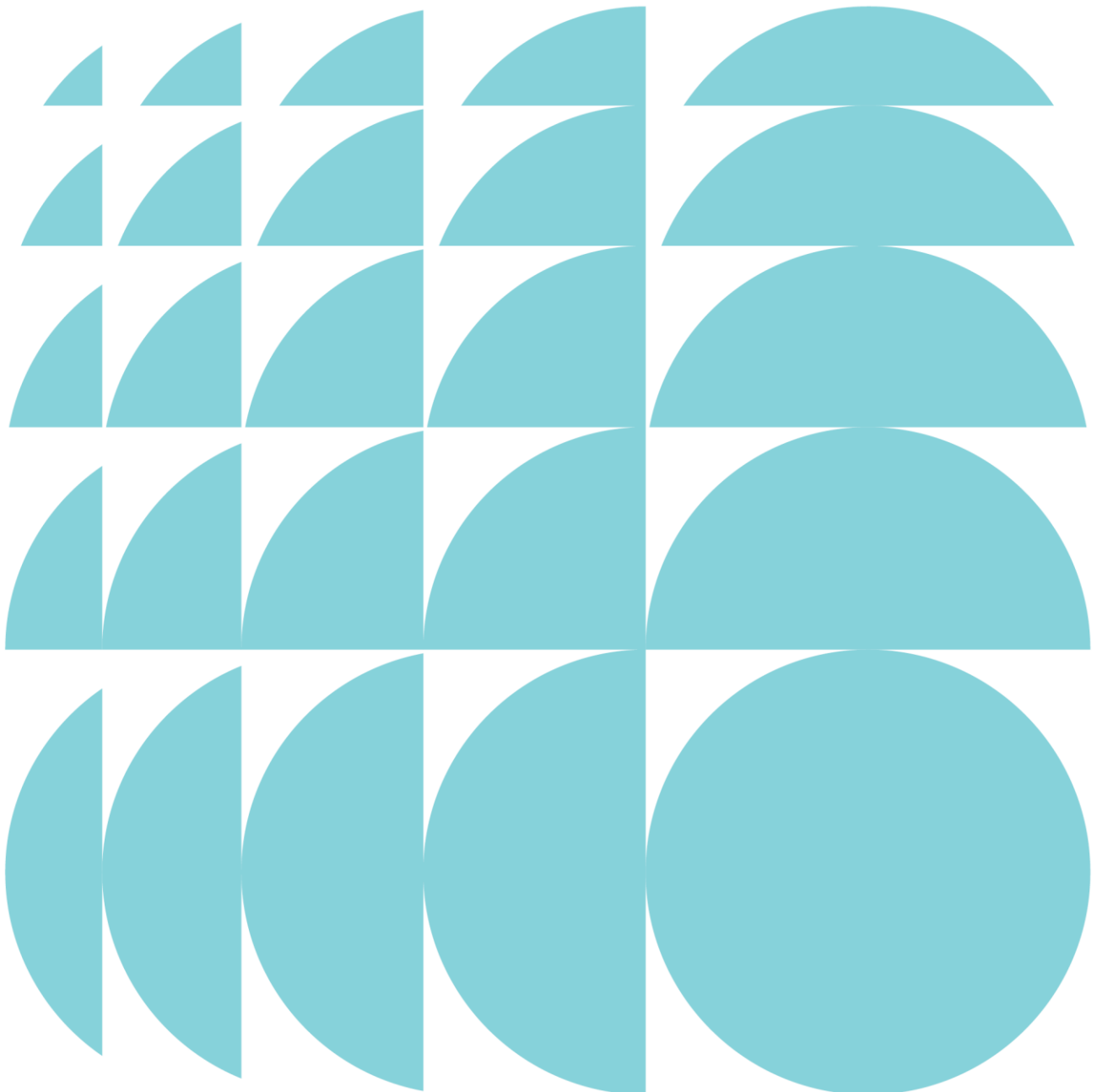


Clause 4.6 Variation
Standard 4.1E(1) – Retail Floorspace Cap

Lot 8 Lasso Road, Gregory Hills
Mixed use commercial development

Submitted to Camden Council
On behalf of Zomaya Group

01 April 2022 | 2210395



Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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Contents

| | | |
|-----|--|----|
| 1.0 | Introduction | 2 |
| 2.0 | Development Standard to be Varied | 3 |
| 2.1 | Is the Planning Control in Question a Development Standard? | 3 |
| 2.2 | Relevant Development Standard | 3 |
| 2.3 | Variation Sought | 4 |
| 3.0 | Justification for Contravention of the Development Standard | 5 |
| 3.1 | Role of the Consent Authority | 6 |
| 3.2 | Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case | 6 |
| 3.3 | Conclusion on Clause 4.1E(1) | 10 |
| 3.4 | Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard | 10 |
| 3.5 | Clause 4.6(4)(a)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) | 11 |
| 3.6 | Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard | 11 |
| 3.7 | Other Matters for Consideration | 12 |
| 4.0 | Conclusion | 14 |

Figures

| | | |
|----------|--|---|
| Figure 1 | Land subject to B5 Business Development Zoning in the Turner Road Precinct | 4 |
| Figure 2 | Proposed Ancillary Uses at Ground Level | 5 |
| Figure 3 | Lasso Road Precinct | 9 |

1.0 Introduction

Overview of Justification for Clause 4.6 Variation Report

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Zomaya Group. It is submitted to the Camden Council (Council) in support of a development application (DA) for the development of a part four, part five mixed use commercial building with two basement levels, including:

- Construction of a part four, part five storey mixed use commercial building with a GFA of 5761m², including;
 - 5246.4m² of business premises GFA, including:
 - 461.4m² at ground level, and 179m² at the ground level mezzanine;
 - 1267m² at level one;
 - 1267m² at level two;
 - 1267m² at level three; and
 - 805m² at level four.
 - Two ancillary retail ‘shop’ tenancies at ground level, comprising 284m² of GFA in total;
 - One ancillary restaurant tenancy at ground level, including a kitchen, with a total GFA of 177m²;
 - One Café / Lobby space at the ground level with a GFA of 53.6m².
- 136 car parking spaces and 4 motorcycle parking spaces across two basement levels, including:
 - 117 car parking spaces (incl. 3 accessible spaces) allocated to the proposed business premises floorspace;
 - 19 car parking spaces allocated to ancillary retail ‘shop’ and restaurant tenancies at ground level; and
- Storage facilities for four bicycles and one after trip facility, including:
- Associated landscaping works at ground level, including the establishment of an internal courtyard with an area of 699m² for use as a temporary event space.

Clause 4.6 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This Clause 4.6 variation request has been prepared to support a variation to the development standard of Clause 4.1E(1) of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, in respect of the shop retail cap of 2,500m² across land subject to the B5 Business Development Zone in Turner Road Precinct. This report should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 1 April 2022.

This Clause 4.6 variation request demonstrates that compliance with the retail ‘shop’ floorspace cap imposed under Clause 4.1E of the *SEPP (Growth Centres) 2006* is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravention of the standard.

Notwithstanding the proposed delivery of 284m² of retail ‘shop’ floorspace across two tenancies at ground level, the proposed development:

- Is consistent with the intended effect of Clause 4.1E(1) of the *SEPP (Growth Centres) 2006* because:
 - The proposed retail floorspace will not detract from the economic strength or function of nearby centres;
 - The proposal comprises 5246.4m² of business premises GFA across four levels and one ground level mezzanine.

- The proposed area of the retail shop floorspace is just 4.9% of the overall development floorspace and 11.4% of the subject retail 'shop' floorspace cap.
- The proposed retail 'shop' floorspace will contribute to and support the broad mix of employment generating land uses proposed for the site.
- Is in the public interest because it is consistent with the objectives of the B5 Business Development Zone; and
- Is consistent with the Greater Sydney Regional Plan and does not raise any matter of significance for State or regional planning.

Therefore, the consent authority can be satisfied that there is sufficient justification for the proposed variation to Clause 4.1E of the *SEPP (Growth Centres) 2006*, as proposed in accordance with the flexibility allowed under Clause 4.6 of this SEPP.

2.0 Development Standard to be Varied

2.1 Is the Planning Control in Question a Development Standard?

The retail floorspace cap of 2,500m² across land subject to the B5 Business Development Zone in Turner Road Precinct is a development standard under Clause 4.1E(1) of the *SEPP (Growth Centres) 2006*.

2.2 Relevant Development Standard

This Clause 4.6 variation request seeks to justify contravention of a development standard set out in the *SEPP (Growth Centres) 2006*. Under Clause 4.1E(1) in Appendix A of the SEPP, a retail 'shop' floorspace cap of 2500m² applies across land within the B5 Business Development Zone in the Turner Road Precinct. Specifically, the proposal contravenes subclause (1), as listed below:

- (1) *The total area used for shops on all land within Zone B5 Business Development in the Turner Road Precinct must not exceed 2,500m².*

Land subject to the retail 'shop' floorspace cap within Turner Road Precinct is shown in **Figure 1**.

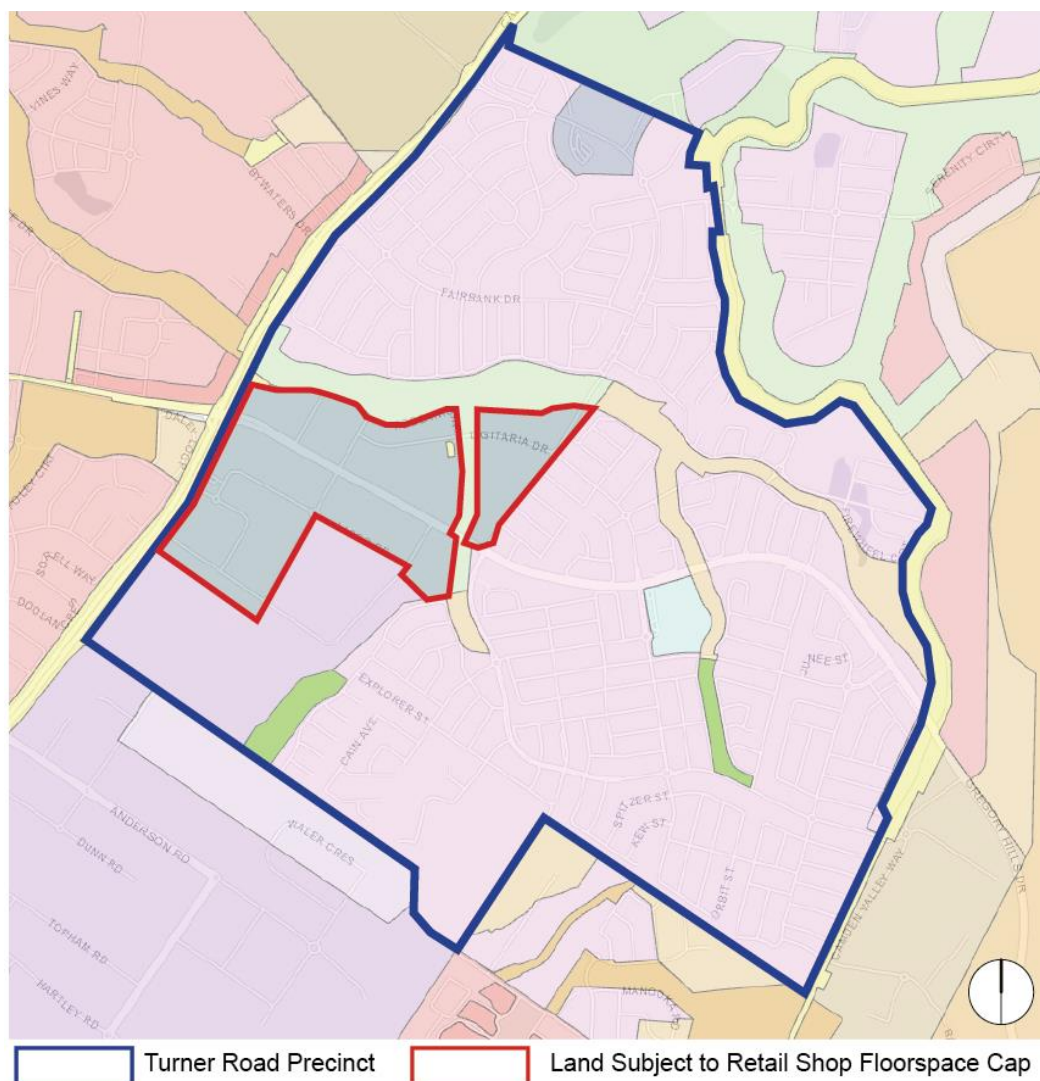


Figure 1 Land subject to B5 Business Development Zoning in the Turner Road Precinct

Source: NSW Spatial Collaboration Portal / Ethos Urban

2.3 Variation Sought

The retail 'shop' floorspace cap across land subject to B5 Business Development Zoning in the Turner Road Precinct of is 2,500m² and this cap has been exhausted. The proposal includes the delivery of 284m² of retail 'shop' floorspace across two ground level tenancies. The proposed retail 'shop' tenancies represent an ancillary use that is necessary to support the proposed business premises floorspace, which comprise 5,246.4m² of GFA across four levels and one ground level mezzanine.

The subject retail tenancies are identified in red outline at **Figure 2** below.

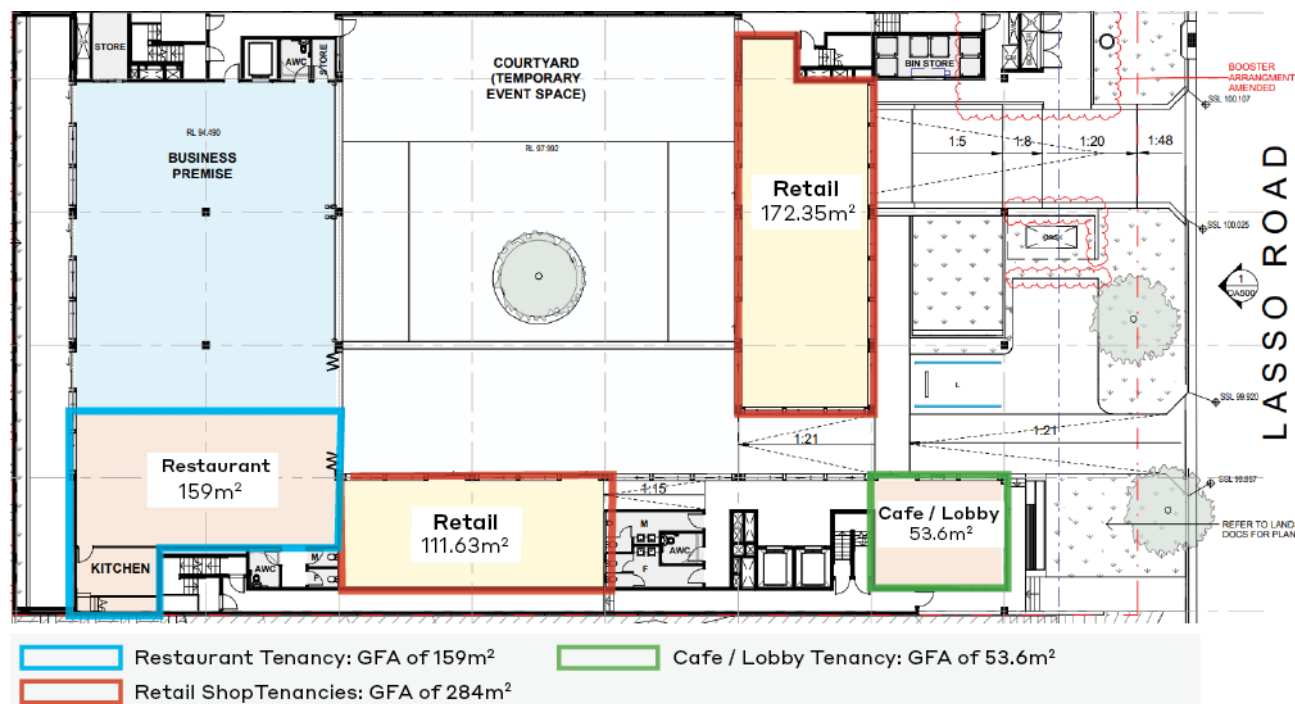


Figure 2 Proposed Ancillary Uses at Ground Level

Source: WMK Architecture

3.0 Justification for Contravention of the Development Standard

Clause 4.6 of Appendix A in the *SEPP (Growth Centres) 2006* provides that:

4.6 Exceptions to development standards

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

Further, Clause 4.6(4)(a) of the *SLEP 2012* provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

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

1. *Wehbe v Pittwater Council [2007] NSW LEC 827; and*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action); and*
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).*
5. *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;*
6. *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and*
7. *Moskovich v Waverley Council [2016] NSWLEC 1015.*
8. *Baron Corporation Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1552 (Baron Corporation).*

3.1 Role of the Consent Authority

The role of the consent authority in considering this request for a Clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in in Clause 4.6(4)(a)(i); and
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The Council is required to form these two opinions first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the Council needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified. This report provides the basis for the Council to reach this level of satisfaction.

The relevant matters contained in Clause 4.6 of Appendix A in the *SEPP (Growth Centres) 2006*, with respect to the retail 'shop' floorspace cap under Clause 4.1E(1), are each addressed below, including with regard to the above decisions.

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

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

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

As the language used in subclause 4.6(3)(a) of the *SEPP (Growth Centres) 2006* is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 variation request. The five ways outlined in *Wehbe* are:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).

- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the retail 'shop' floorspace cap are achieved notwithstanding the non-compliance with the standard (the First Way).

Further to this, it is considered that the relevance of the subject retail 'shop' floorspace cap is questionable. The retail 'shop' floorspace cap of 2500m² across Turner Road Precinct has been exhausted, despite the fact that the area is not developed to its full capacity. In light of this, it is further considered that the Fourth Way applies to this Clause 4.6 Variation Request, as the subject retail 'shop' floorspace cap has been exhausted by Council's own actions in granting consents departing from the standard with little regard for the pace of development across the precinct.

3.2.1 The underlying objectives or purposes of the development standard

The SEPP does not provide any specific objectives for the development standard at Clause 4.1E(1). In the absence of specific objectives, we consider that the standard intends to support the objectives of the B5 Business Development Zone, being:

- *To enable a mix of business and warehouse uses and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for a wide range of employment generating development.*
- *To provide for a mix of ancillary uses to support the primary function of providing employment generating development.*
- *To maintain the economic strength of centres by limiting the retailing of food, clothing and convenience shopping.*
- *To provide for a range of uses, including recreational uses and function centres, that complement other permissible employment generating land uses within the zone.*

The retail 'shop' floorspace cap imposed under Clause 4.1E(1) has the intended effect of supporting the overarching objective to "maintain the economic strength of centres by limiting the retailing of food, clothing and convenience shopping" in the B5 Business Development Zone.

3.2.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

To enable a mix of business and warehouse uses and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres

The subject site is located within a key bulky goods and employment precinct situated on the eastern side of Camden Valley Way and focused around the intersection with Gregory Hills Drive. Immediately surrounding the Lasso Road site are key uses including bulky goods, industrial and commercial uses and key tenants along Lasso Road including Bunnings, Red Rooster, Oporto's and McDonalds.

The proposed retail floorspace is ancillary to a business premises comprising just 4.9% of the proposed GFA. It will support the operation of the proposed business premises and will not be of a size that is sufficient to compete with the viability of nearby centres.

It is therefore considered that the proposal meets the objective of enabling a mix of business uses that require large floor area in a location that is close to and which supports the viability of nearby centres.

Provide for a wide range of employment generating development

The objectives for the B5 Business Development Zone establish the intent to "provide for a wide range of employment generating development". The proposal comprises 5246.4m² of business premises GFA across four

levels and one ground level mezzanine. It is estimated that this component alone could accommodate approximately 300 employees.

The proposed development will result in benefits to the local community through employment generation. Jobs supported by the development will accrue through direct and indirect employment generated during both the construction phase, and ongoing employment as part of the operational phase.

The proposed retail 'shop' floorspace will have an overall positive impact with respect to employment generation as:

- The proposed retail 'shop' floorspace is capable of supporting 9 full-time equivalent (FTE) positions on an ongoing basis once the project is complete and fully occupied. This estimate has taken into account the *City of Sydney Floor Space and Employment Survey 2017*, which outlines that 1 worker is supported for every 30.2m² of retail floorspace.
- For the retail 'shop' floorspace, employment will generally be sourced from residents within the immediate area. This new source of employment is important for young people (for whom retailing is a typical entry-point into the workforce) and others seeking to establish rewarding careers in the retail sector.
- Notwithstanding the point above, retail stores are also an important source of employment for older people seeking to re-enter the workforce, or those seeking casual work.

It is therefore considered that the proposal meets the objective of providing for a wide range of employment generating uses.

Provide for a mix of ancillary uses to support employment generating development

The proposal comprises 5246.4m² of business premises GFA. It is estimated that this component alone could accommodate approximately 300 employees. The proposed development also incorporates ancillary uses at ground level, which includes two retail 'shop' tenancies comprising a GFA of 284m².

Transport for NSW employment data indicates that as at 2021 some 1,570 workers are estimated to be provided within the immediate Lasso Road precinct. This number is projected to increase to more than double over the period to 2036 to around 3,900 workers. This represents a significant worker population that will require direct access to retail amenities both before, during and after work.

These workers, and those in the immediate surrounds, will form the primary customer segment for the proposed ancillary retail uses at the subject site. Ancillary uses are proposed at ground level, including two retail 'shop' tenancies (284m²) which are subject of this 4.6 request. Assuming that a typical worker would spend around \$10 per workday at retail facilities near their place of work, this would indicate that existing workers would direct around \$3.8 million each year to retail facilities in the immediate area. This is projected to increase to around \$9.4 million by 2036, including over \$0.7 million from workers at the subject site directly. *(Note that these forecasts reflect a normalised working week and constant \$10 expenditure – not allowing for inflation).*

A large proportion of worker retail expenditure would be directed to food and beverage facilities, with reduced expenditure directed to non-food retail facilities. The high growth rate supports the strong demand for the proposed ancillary retail uses at the subject site.

The proposed retail 'shop' floorspace is necessary to support the proposed development and surrounding employment generating land uses because:

- There is a significant population that will require direct and localised access to retail amenities both before, during and after work.
- The site is not readily accessible to a residential population; therefore, the large majority (if not all) retail customers visiting the site will be workers and visitors to the Lasso Road precinct.
- The limited size of retail floorspace proposed (284m²) is not sufficient to create a critical mass of retailing that would attract customers from a broader geographic area.
- The proposed retail 'shop' tenancies are necessary and reasonably anticipated in the context of the proposed development, which could accommodate some 300 workers once operational.

It is therefore considered that the proposal meets the objective of providing a mix of ancillary uses to support employment generating development.



Figure 3 Lasso Road Precinct

Nearmap / Ethos Urban

To maintain the economic strength of centres by limiting the retailing of food, clothing and convenience shopping.

Clause 4.1E(1) of the *SEPP (Growth Centres) 2006* seeks to ensure that retail 'shop' floorspace within the Lasso Road precinct would not impact upon the envisaged hierarchy of centres and intended function of Central Hills Business Park.

The proposed retail 'shop' tenancies would not impact on the ongoing operating or viability of any existing retail centre in the local area, or impact negatively on the existing hierarchy of centres. This is attributed to the following:

- There are a range of existing retail uses (including McDonalds, Oportos and Red Rooster) currently provided within the immediate precinct and in close proximity to the site. The proposed retail 'shop' floorspace at the site would be aligned with, and complementary to these existing uses, which service the local worker market.
- Based on a typical retail trading level of \$5,000 per m² (as the specific tenants are currently unknown), the 284m² of retail floorspace could achieve sales of some \$1.4 million a year once complete and fully occupied. The projected sales revenue of these tenancies is reasonable because:
 - The estimated annual sales of \$1.4 million would account for just over one third of existing worker expenditure in the immediate precinct, and just over 15% of future worker expenditure in 2036; such that
 - The proposed retail uses would only account for a small proportion of worker retail demand, with a large proportion of worker expenditure still available to existing and future retail uses in the local area.
- Any impact on retail sales revenue across Lasso Road Precinct would be in the short term only, with local retailers to benefit from future growth in retail expenditure which is projected to increase by almost \$6 million over the period to 2036 – this would support both existing and future retailers in the local area.
- The nearest existing retail centre is Gregory Hills Village Centre, some 1.5 km from the site. This centre occupies some 7,500m² of retail floorspace and is anchored by a full-line Woolworths supermarket as well as an

ALDI. The Gregory Hills Village Centre will serve a mix of local residents and workers whereas any retail development at the subject site will primarily serve local workers. With respect to Gregory Hills Village Centre, it is further noted that:

- The proposed retail 'shop' tenancies would account for less than 4% of existing retail floorspace provided at Gregory Hills Village Centre; such that
- Indicatively, the Gregory Hills Village Centre would achieve sales of approximately \$65 million in sales a year (based on typical averages), as such the projected sales at the subject site of \$1.4 million, would represent around 2% of sales at the nearest retail centre. As such, any impact is negligible and in the short term only, with surrounding centres to benefit from continued market growth.

It is therefore considered that the proposed retail 'shop' floorspace will not impact the economic strength of local centres.

To provide for a range of uses, including recreational uses and function centres, that complement other permissible employment generating land uses within the zone.

As discussed, the proposed development is planned to include 5246.4m² of business premises floorspace, which represents the primary land use proposed at the site. It is established throughout previous sections of this cl4.6 written request, that the proposed retail 'shop' tenancies represent a reasonable ancillary use that will support and complement the operation of business premises floorspace at the site.

3.3 Conclusion on Clause 4.1E(1)

The above sections have demonstrated that compliance with the subject retail 'shop' floorspace cap standard is unreasonable or unnecessary in the circumstances of the case. Clause 4.1E(1) has the intended effect of supporting the objectives for the B5 Business Development Zone in the *SEPP (Growth Centres) 2006*.

The proposal is consistent with these objectives notwithstanding the proposed delivery of two ancillary retail 'shop' tenancies at ground level.

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

Clause 4.6(3)(b) of the SLEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development are two ground floor retail 'shop' tenancies which comprise a total of 284m² of GFA, and which result in the exceedance of the development standard.

As demonstrated throughout this report, there are sufficient environmental planning grounds to justify contravention of the retail floorspace cap in Clause 4.1E(1) in this specific instance as:

- The proposed retail 'shop' tenancies will not detract from the economic strength or function of centres.
- The proposed retail 'shop' tenancies will have an overall positive impact in respect of employment generation.
- The proposed development includes an appropriate mix of ground level ancillary retail uses. These ancillary uses are necessary to support the operation of business premises, which represent the primary land use activity proposed across the site.
- Any impact to the sales revenue of retail activities across the broader precinct, albeit negligible, would be short term only.

3.4.1 Conclusion on Clause 4.6(3)(b)

For these reasons, there are sufficient environmental planning grounds to justify the contravention of the subject retail 'shop' floorspace cap, as it promotes good design and amenity of the built environment (objective 1.3(g) of the *Environmental Planning and Assessment Act 1979*).

3.5 Clause 4.6(4)(a)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

This written request adequately and comprehensively addresses the matters required to be demonstrated by subclause (3).

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

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

3.6.1 Consistency with objectives of the development standard

Clause 4.1E(1) does not have specific objectives, though its intended effect is to support the objectives for the B5 Business Development Zone. This report has demonstrated that those objectives are achieved notwithstanding the provision of retail 'shop' floorspace as part of the proposal.

3.6.2 Consistency with objectives of the zone

The proposal is consistent with the objectives for the B5 Business Development Zone, as established under **Section 3.2.2**.

3.6.3 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase "environmental planning grounds" is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 1** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Assessment of the proposed development against the Objects of the EP&A Act

| Object | Comment |
|--|---|
| <i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i> | <p>The proposed form will promote the economic and social welfare of the community. It will support the introduction of a significant employment generating land use activity at the site in the form of 5246.4m² of business premises floorspace.</p> <p>The proposed retail 'shop' floorspace comprises only a small proportion of the overall floorspace quantum (4.9%), but is necessary to support the proposed development and surrounding employment generating land uses because:</p> <ul style="list-style-type: none"> • There is a significant population that will require direct and localised access to retail amenities both before, during and after work. • The site is not readily accessible to a residential population; therefore, the large majority (if not all) retail customers visiting the site will be workers and visitors to the Lasso Road precinct. • The limited size of retail floorspace proposed (284m²) is not sufficient to create a critical mass of retailing that would attract customers from a broader geographic area. • The proposed retail 'shop' tenancies are necessary and reasonably anticipated in the context of the proposed development, which could accommodate some 300 workers once operational. |
| <i>(b) to facilitate ecologically sustainable development by integrating relevant</i> | As above, the proposed Retail 'Shop' floorspace is necessary to support the proposed development and surrounding employment generating land uses. |

| Object | Comment |
|--|---|
| <i>economic, environmental and social considerations in decision-making about environmental planning and assessment,</i> | <p>Notwithstanding this, the proposed Retail 'Shop' tenancies are also necessary to support the broader growth of the Turner Road Precinct .</p> <p>As discussed in Section 3.2.2, Transport for NSW employment data indicates that as at 2021 some 1,570 workers are estimated to be provided within the immediate Lasso Road precinct. This number is projected to increase to more than double over the period to 2036 to around 3,900 workers.</p> <p>This represents a significant worker population that will require direct access to retail amenities both before, during and after work.</p> <p>It is therefore considered that the proposed Retail 'Shop' tenancies address a necessary economic consideration in respect to the demand for ancillary uses to support development within the surrounding area.</p> |
| <i>(c) to promote the orderly and economic use and development of land,</i> | As above, the proposed Retail 'Shop' tenancies address a necessary economic consideration in respect to the demand for ancillary uses to support development within the surrounding area. It is therefore considered that the proposed Retail 'Shop' tenancies promote the orderly and economic use and development of land. |
| <i>(d) to promote the delivery and maintenance of affordable housing,</i> | Residential land uses are not permitted on the site. |
| <i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i> | The proposed development will have no impact on threatened species or ecological communities. |
| <i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i> | The proposal is not located in the vicinity of any items of heritage and will not impact on the understanding of heritage items located away from the Site. |
| <i>(g) to promote good design and amenity of the built environment,</i> | As detailed in the SEE, the proposed building will reinforce the desired street alignment through incorporating a 5m setback from Lasso Road. It is further noted that vegetated setbacks, the proposed materials, and the overall built form achieve an outcome that is suitable in respect to the character of surrounding development. This matter is further discussed in the SEE. |
| <i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i> | The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants. |
| <i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i> | This object is not directly relevant to this proposed development |
| <i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i> | This DA submission relates to the first detailed design proposal for Lot 8, Lasso Road. Necessary opportunities for community participation in the assessment of the proposed development will be provided. |

3.7 Other Matters for Consideration

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

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

These matters are addressed in detail below.

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

The variation of the retail 'shop' floorspace cap standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the Greater Sydney Regional Plan – A Metropolis of three Cities in that it:

- Promotes the 30-minute city aspiration through the co-location of business premises and supporting ancillary uses.
- Will not detract from the strength or function of centres, including Narellan and Campbelltown;
- The proposal is consistent with the aims and objectives for the precinct under the *SEPP (Growth Centres) 2006*;
- The proposal is consistent with the *Turner Road Development Control Plan 2018* and relevant provisions of the *Camden Development Control Plan 2019*;
- Will contribute to the generation of jobs during both the construction and operational stages; and
- Implements an environmentally sensitive design.

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

The retail floorspace cap has already been exhausted. It follows that there is no public benefit in maintaining the retail floorspace cap in this instance. As outlined in **Section 3.7.1** above, there are sufficient environmental planning grounds to warrant contravention of the development standard. It is further considered that the proposed variation is in the public interest, and should therefore be supported in this case, because:

- The proposed retail 'shop' tenancies will increase activation and vibrancy within the Lasso Road precinct, including ground floor activation during key business hours.
- The proposed retail 'shop' tenancies will enhance the amenity in the Lasso Road precinct, increasing the desirability and appeal for local businesses to operate in the precinct.
- The proposed ground level ancillary retail uses offer increased choice, range and price competition for local customers by providing additional retail uses focused on serving workers in Lasso Road Precinct.
- The proposed ground level ancillary uses will support increased investment activity within this growing precinct.
- As discussed in **Section 3.2.2**, the proposed retail floorspace is ancillary to a business premises comprising just 4.9% of the proposed GFA. It will support the operation of the proposed business premises and will not be of a size that is sufficient to compete with the viability of nearby centres.

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

There are no other matters required to be taken into consideration.

4.0 Conclusion

The assessment above demonstrates that compliance with the retail 'shop' floorspace cap in Clause 4.1E(1) of the *SEPP (Growth Centres) 2006* is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst enabling a better outcome in planning terms.

This Clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the retail floorspace cap, the proposed development:

- Is consistent with the intended effect of Clause 4.1E(1) of the *SEPP (Growth Centres) 2006* because:
 - The proposed retail 'shop' tenancies will not detract from the economic strength or function of centres.
 - The proposed retail 'shop' tenancies will have an overall positive impact in respect of employment generation.
 - The proposed development includes an appropriate mix of ground level ancillary uses. These ancillary uses are necessary to support the operation of business premises, which represent the primary land use activity proposed for the site and represent just 4.9% of the overall proposed GFA.
 - Any impact to the sales revenue of retail activities across the broader precinct, albeit negligible, would be short term only.
- The proposal is in the public interest because it is consistent with the objectives of the B5 Business Development Zone; and
- The proposal is consistent with the Greater Sydney Regional Plan and does not raise any matter of significance for State or regional planning.

Therefore, the consent authority can be satisfied that there is sufficient justification for the variation to the subject retail floorspace cap as proposed in accordance with the flexibility allowed under Clause 4.6 of Appendix A in the *SEPP (Growth Centres) 2006*.