

# **AMMENDED CLAUSE 4.6 OBJECTION TO DEVELOPMENT STANDARD (FLOOR SPACE RATIO)**

## **REDEVELOPMENT OF THE GLADESVILLE RSL YOUTH CENTRE**

29 MAY 2017  
FINAL  
PREPARED FOR GLADESVILLE RSL

**URBIS**

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# 1. OVERVIEW

This report forms a variation request to the applicable Floor Space Ratio (FSR) standard contained within the *Ryde Local Environmental Plan 2014* (RLEP2014). It has been prepared with regard to the following considerations:

- Clause 4.6 of RLEP;
- The objectives of Clause 4.4 Floor Space Ratio, being the development standard to which a variation is sought.
- Relevant case law specifically the considerations for assessing development standards including *Wehbe v. Pittwater Council* [2007] NSWLEC 827 and *Four2Five Pty Ltd V Ashfield Council* [2015] NSW LEC.
- “*Varying Development Standards: A Guide*” published by the Department of Planning and Infrastructure (August 2011).

The variation request provides an overview of the development standard and the extent of variation proposed to the standard. The variation is then assessed in accordance with Clause 4.6 of the RLEP2014 and the relevant principles of the court rulings detailed above.

A variation to the strict application of the FSR development standard is considered appropriate for the proposed development as:

- The objectives of the RLEP2014 FSR control are achieved notwithstanding the technical non-compliance;
- The objectives of the RLEP2014 B4 Mixed Use Zone are achieved notwithstanding the technical non-compliance;
- The proposed additional floor space relates only to the expansion of the Gladesville RSL Youth Centre which offers a significant community benefit for the suburb of Gladesville and the greater Ryde Local Government Area;
- The enlarged youth centre proposed exceeds the minimum requirements detailed under the *Ryde Development Control Plan 2014* (RDCP2014) and provides for a significant public benefit;
- The development as proposed exceeds the minimum residential amenity requirements for the site and does impact on the existing/potential residential amenity of adjacent developments in a way a compliant scheme would not;
- The additional floor space proposed is in the form of a mezzanine floor level which if removed would not alter the bulk or scale of the building; and
- The public benefit of maintaining the development standard is not eroded by the proposal

We note that this report has been amended following feedback received from Ryde City Council. Specifically, the report has been updated to detail the requirements of the Gladesville RSL as a registered club under the *Registered Clubs Act 1976* and its requirement to not operate for profit or as a private industry which has directly impacted the need and subsequent built form of the proposed development. This matter is further detailed in the public interest portion of this report.

## 2. THE DEVELOPMENT STANDARD

Clause 4.4(2) of RLEP2014 specifies the following:

*The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

FSR is defined by RLEP2014 as follows:

**floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area

The relevant FSR Map nominates a FSR of 4.3:1 for the site. When measured in accordance with the RLEP2014 definition, the proposal seeks consent for an FSR of 4.58:1. This equates to an additional 267.77sqm of total Gross Floor Area (GFA).

### RYDE LOCAL ENVIRONMENTAL PLAN 2014 CLAUSE 4.6

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

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

Accordingly, justification is set out below for the departure from the FSR control applicable under the RLEP2014. The purpose of the information provided is to demonstrate that strict compliance with the FSR standard detailed for the site under the RLEP2014 is unreasonable or unnecessary in the circumstances of this particular case.

### 3. CLAUSE 4.6 ASSESSMENT

This section assesses the proposed variation to consider whether compliance with the FSR standard can be considered unreasonable or unnecessary in this case and whether there are sufficient environmental planning grounds to justify contravening the development standard.

The assessment is structured in accordance with the three matters for consideration identified in the *Wehbe Land and Environment Court* judgment:

1. *“The applicant must satisfy the consent authority that “the objection is well founded,” and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy’s aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
  - a. *Whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
  - b. *The public benefit of maintain the planning controls adopted by the environmental planning instrument.”*

Consideration has also been given to the findings of the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson and upheld on appeal by Justice Pain. This case found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- *Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;*
- *That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity); and*
- *That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone which applies to site.*

An assessment of the proposed variation to the FSR standard against the provisions of Clause 4.6 and the relevant case laws is provided in the following sections.

#### 3.1. PRE LODGEMENT CONSULTATION WITH RYDE COUNCIL

On Wednesday 29 April 2015, representatives of the Gladesville RSL met Dominic Johnson, Meryl Bishop, Anthony Ogle, Lexi MacDonald, and Michael Edwards of Ryde Council to discuss the proposal which had been developed taking into consideration, the constraints of the site specifically the .

The development plans were presented and Ryde Council were advised of the following:

- The design had taken into consideration the Heritage Assessment Report;
- A “community area” (new Youth Centre) (as required under Clause 3.1.6 (j) of Council’s DCP) of approximately 1,025m<sup>2</sup> is included in the design which is approximately 280m<sup>2</sup> larger than the current facility to meet the growing demand in the area as residential density increases;
- Car parking for Club members use is being provided to remove some of the pressure being experienced on Council’s public car park; and
- While the Project complies with the LEP in terms of use and setbacks, the project will exceed the permissible FSR by 250-280m<sup>2</sup>.

As a result of this meeting the Gladesville RSL Club were advised by Dominic Johnson that whilst the proposed concept exceeds the permissible area by less 5%, Council had no issue with the increased FSR

on the condition it didn't exceed 10% considering the proposed Youth Centre will be larger than the existing facility

## 3.2. COMPLIANCE IS UNREASONABLE OR UNNECESSARY

In the Wehbe judgement Preston CJ set out five ways in which a variation to a development standard can be supported as follows:

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard;***
2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;***
3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;***
4. ***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;***
5. ***The zoning of the 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.***

Consideration (1) which requires a demonstration that the objectives of the FSR standard can be achieved notwithstanding noncompliance is relevant in this case. The compliance of the proposed development with the objectives of the FSR standard in Clause 4.4 of the RLEP2014 is demonstrated in Table 1 below

Table 1 – Compliance with FSR Objectives

Objective	Design Response
<i>to provide effective control over the bulk of future development</i>	<p>The additional floor space proposed by the application does not contribute to excessive height through an additional level or the like and is located within the Youth Centre facilities. Excluding a minor noncompliance with the height of building standard caused by a lift overrun the proposal is otherwise compliant with the in the RLEP2014.</p> <p>This mezzanine floor if removed would not alter the bulk and scale of the development itself but rather lead to a poorer environmental outcome for the application. A reduction in the floor space would therefore not reduce the bulk in any way shape or form.</p>
<i>to allow appropriate levels of development for specific areas,</i>	<p>The additional floor space which has resulted in the noncompliance with the development standard is attributed to the expansion of the Gladesville RSL Youth Centre. The expansion of the facilities has been proposed to ensure that adequate facilities are provided to ensure the centre can continue to cater for the ongoing demand for the facilities.</p> <p>The site is also within an established urban area and is already serviced by the necessary utility infrastructure and existing services can be extended, augmented or amplified (if required) to accommodate increased demand from the development.</p>

Objective	Design Response
	The existing road infrastructure of the locality can accommodate the additional floor space of the proposal and as such can be considered an appropriate level of development within the area. The Traffic and Parking Report prepared for the proposal by GTA Consultants has confirmed that all intersections in the locality will maintain the existing levels of service regardless of the additional floor space which is proposed as part of the application.
<i>in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.</i>	The proposed development site is located within the Gladesville Town Centre as identified by the LEP. The proposed development is entirely in keeping with the notion of consolidating development in and around public transport cores in a sustainable fashion.

Despite the technical departure from the relevant FSR standard the proposed development remains consistent with the objectives of Clause 4.4 of the RLEP2014 and therefore it is demonstrated that strict compliance with the FSR standard in this instance is unreasonable and unnecessary.

Further, it is considered that the proposal will remain consistent with the objectives of the B4 zone as summarised in Table 2 below

Table 2 – Compliance with zoning objectives

Objective	Design Response
<i>To provide a mixture of compatible land uses.</i>	The additional floor space has been proposed to cater for the additional demand currently being experienced by the youth centre facilities. The ongoing location of the facilities within the Gladesville Town Centre will ensure that they will be accessible for all members of the public and is a compatible land use within the area.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling</i>	The proposed development will provide for a mixed-use premise within an established urban core with direct access to public transport along the Victoria Road corridor.
<i>To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.</i>	The proposal will not impact on the Macquarie University campus or the Macquarie Park corridor.
<i>To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.</i>	The proposal will not impact on the Macquarie University campus or the Macquarie Park corridor.

Consideration three (3) clearly indicates that strict compliance with the development standard should not be required if it will thwart or defeat the purpose of the LEP. Whilst the proposal is capable of complying with underlying zone and development standard objectives it is not considered that the objectives truly speak to the purpose of the development which seeks to ensure the development of a true community facility. The community facility in the form of the proposed youth centre the on the site has resulted in the proposal not achieving compliance with the numerical standards of the FSR control. We further note that the additional floor space proposed in the application pertain to a mezzanine floor only.

The development standard for the site has not given consideration for the community use of the site to be expanded which is a circumstance unique to the proposal. Whilst the zone objectives and development standard objectives do not consider the need for community facilities they are considered in the overarching aims of the RLEP particularly the identified need for the RLEP to promote the social development of the Ryde community. The theme is continued in the objectives of the Environmental Planning and Assessment Act 1979 which aims to encourage the provision and co-ordination of community services and facilities.

In requiring strict compliance with the development standard and in doing so reducing the size of the community uses of the site the proposals ability to meet the overarching aims and objectives of both the RLEP and Environmental Planning and Assessment Act 1979. Compliance in this circumstance would not improve the outcome. Rather it would unreasonably impact on the public benefit provided for the project effectively undermining the objectives of the proposal. It is our view that to force compliance in the circumstance would be antipathetic to the inherent flexibility provided by clause 4.6, thereby hindering the attainment of its objectives.

In this regard, it is considered that the development objectives whilst ultimately achieved by the proposal do not have full consideration for the significant community benefit of the proposal and are therefore not considered relevant for the purposes of the assessment of the application and requiring strict compliance will thwart the underlying objectives for the development of the site.

### **3.3. ADEQUATE GROUNDS FOR CONTRAVENING THE DEVELOPMENT STANDARD**

Clause 4.6 requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. This section demonstrates that the impacts of the variation will be consistent with the external site impacts that may be reasonably expected by a complying development about the following:

- The current and desired future character of the locality;
- The preservation of the residential amenity of the site and surrounding developments, about overshadowing impact; and
- The public benefit associated with the proposal

#### **3.3.1. Current and Desired Future Character of the Locality**

The proposal is consistent with the desired future character of the Gladesville Town Centre and Victoria Road Corridor. As detailed within the Ryde Development Control Plan the precinct is envisaged to achieve the following:

- Serve its local communities better with a diverse range of revitalised uses;
- Include major retail, commercial and residential developments on key sites;
- Develop a more cohesive built form and better landscaped public domain;
- Define urban spaces as outdoor rooms lined by consistent built form and street trees;
- Have heritage items and conservation areas protected and enhanced;
- Contain new buildings which relate in built form to existing streetscapes and heritage items;
- Enhance pedestrian links and public domain design to attract people to shop, work and live in the town centre; and
- Be accessible for residents and for users of the centre.

The subject site is a key site in the context of the Town Centre precinct. The expanded Youth Centre facilities will not impact on the further development of the Gladesville Town Centre and will have an inconceivable impact on the existing public infrastructure. The works will however make a positive contribution to the provision and co-ordination of community services and facilities through an expansion of the youth centre to cater for a level of demand which cannot currently be accommodated. The rigid enforcement of the FSR development standard will preclude the development from provided the Youth Centre development.

It is further noted that additional facilities have been beyond the minimum requirements of the RDCP2014 to cater for the proposed development. In this regard the additional floor space will be adequately catered for by the proposed development without adversely impacting the surrounding development.



The Youth Centre is to the circumstances of the proposed development and will not be a matter for consideration for other developments within the locality which do not presently provide a Youth Centre and are unlikely to provide such a facility in the future.

### 3.3.2. Residential Amenity

Despite the contravention to the FSR development standard, the proposal achieves a high level of amenity for the residents of the development as:

- The proposed development is orientated and positioned to achieve greater percentage north-east and north-west facing apartments;
- 14.7% (29 out of 34) of apartments achieve no direct sunlight;
- The proposal meets the Apartment Design Guide requirements for naturally cross ventilated apartments and apartments that achieve solar access for more than 2 hours in mid-winter; and
- The proposal exceeds the Apartment Design Guide requirements for total areas of, communal open space, and private open space to all apartments.

Further, the proposal results in appropriate environmental impacts to surrounding development sites as:

- The proposal provides two hours of solar access to at least 50% of all properties adjacent to the site on 21 June to enable the future redevelopment for residential purposes;
- The proposal maintains the existing heritage façade of the Jordan Hall whilst not impeding on the development of a design which allows for a high level of residential amenity;
- The proposed development significantly exceeds the requirements of the ADG in regards to the provision of Communal Open Space;

### 3.3.3. Public Benefits

The additional floor space proposed as part of the subject application is considered to provide a significant community benefit through the refurbishment and expansion of the Gladesville RSL Youth Centre. As noted in the Statement of Environmental Effects the existing facilities of the Youth Centre are inadequate to cater for both the existing and anticipated demand of the site. The additional floor space proposed by this application will facilitate the expansion of the Youth Centre beyond the requirements of the RDCP2014 to allow the facilities to appropriately cater for all athletic disciplines provided by the club. The additional facilities will also ensure that the Youth Centre can provide safe and modern facilities.

Furthermore, the Gladesville RSL Club is required under the provisions of the *Registered Clubs Act 1976* to operate for the benefit of the local community and cannot be operated for profit. This is made explicitly clear under clause 30 section (i) of the *Registered Clubs Act 1976* which states the following:

*Any profits or other income of the club shall be applied only to the promotion of the purposes of the club and shall not be paid to or distributed among the members of the club.*

As noted in the Club's charter and in accordance with the Registered Club's Act, the Board of Directors act as Trustees on behalf of the beneficial owners (members). As Trustees, the Board of Directors have a legal obligation by legislation to ensure any profits made by the Club are used as required by its charter including donating to charities, providing sporting facilities and opportunities for the youth, and ensuring the future of the Club for its members and community. Under the Club's charter, the Club is also committed to provide a Youth Centre. This is consistent with City of Ryde's LEP objectives for this site.

The Youth Centre caters for gymnastics (550 children), dance (70+ children) and karate (30 + children). To ensure the continuance and future of the Youth Centre, the Club has been subsidizing its operations. For some time the existing Youth Centre, albeit antiquated, has been at capacity. As the Gladesville/Hunters Hill areas continues grow through greater residential density projects, the Board of Directors resolved to increase the size of the facility by approximately 25% in order to meet the current and future demand. The purpose of this mixed use development is primarily to realise this commitment for a new "state-of-the-art" Youth Centre without placing financial pressure on the Club for its other activities.

Having considered this it is clear that the additional floor space sought by the club is not motivated by private interests is but rather by the constitution of the Gladesville RSL Club which requires the club to operate a sporting facility for its members and promote social and educational undertaking. The relevant extracts of the constitution are provided below:

- a) *To provide for members and for members' guests a social and sporting Club with all the usual facilities of a Club Including residential and other accommodation, liquid and other refreshment libraries and **provision for sporting, musical and educational activities and other social amenities.***
- g) *To promote **social and educational undertakings** for the benefit of members,*

In this regard the proposed development would be considered inappropriate unless it fully caters for the growing demand which will be placed on the facilities. The facilities proposed are of a size which is considered to match the needs of the community and in this regard the application is in keeping with the public interest of the site.

The proposed development also seeks to retain the heritage façade and installation of a heritage interpretation panel is also considered to be in the public interest as it will appropriately maintain the heritage aspects of the site and ensure that the heritage conservation area adjacent to the site will not be adversely impacted. The club has received significant feedback from its members applauding the retention of the heritage façade as part of the redevelopment of the site.

For these reasons, it is considered that there are adequate grounds to support the proposed variation to the FSR standard to accommodate the increased size of the Gladesville RSL Youth Centre.

### 3.4. IS THE OBJECTION WELL FOUNDED

The proposed exception to the FSR development standard will, facilitate the Gladesville RSL Youth Centre to allow for additional demand to be suitably catered for within a centrally accessible area. The proposed development does not result in any unreasonable or significant adverse impacts (social, economic or environmental). In particular, the variation does not diminish the redevelopment potential or amenity of any adjoining land.

The Youth Centre is a unique land use within Gladesville which presently cannot cater for the existing demand for the facilities both from a safety and facility size perspective. The expansion of the facility is to the circumstances of the proposed development and is a requirement under the RDCP and will not be a matter for consideration for other developments within the locality.

In addition to this the predominate land owners on commercial redevelopment size commiserate or larger in size to that of the development site are owned by private land holders as opposed to a registered club facility. The additional floor space sought by the application will not be used for private gain but rather for the greater good of the Gladesville community.

Compliance in this circumstance would therefore not improve the outcome of the proposal but rather significantly restrict the potential for the development to achieve its underlying objectives and in doing so would unreasonably impact on the public benefit provided for the project. It is our view that to force compliance in the circumstance would be antipathetic to the inherent flexibility provided by clause 4.6, thereby hindering the attainment of its objectives, in this regard the objection is well founded.

### 3.5. SIGNIFICANCE FOR STATE OR REGIONAL PLANNING

The non-compliance will not raise any matter of State or Regional Significance

### 3.6. THE PUBLIC INTEREST

Clause 4.6 requires that the consent authority consider the public interest in determining whether to support the variation. As established in section 3.3.3 of this report the proposed variation to the FSR development standard will result in a better outcome for the public as the proposed development will increase the community facilities of the site

It is considered that the additional floor space proposed by the application will at no stage be contrary to the public interest for the reasons stated above. It is also considered that there will be no adverse environmental impacts.

## 4. CONCLUSION

In view of the development context strict compliance with Clause 4.4 of the RLEP2014 is unreasonable in this case and the proposed development is justified on the following environmental planning grounds as follows:

- The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.4
- The proposed development achieves these outcomes regardless of the noncompliance and it is considered a compliant scheme would have the same impacts. Strict application of the standard is therefore considered unreasonable, unnecessary and not in keeping with the inherent flexibility provided by clause 4.6, thereby hindering the attainment of its objectives.
- The additional floor space has been proposed to provide an expansion to the Gladesville RSL Youth Centre to meet growing demand for the facilities. The expansion of the facility is to the circumstances of the proposed development and proposes a significant public benefit for the local community. The proposed non-compliance will not undermine the public benefit and legitimacy of the standard and no matters of State or regional planning would be affected by the proposed variation.
- The proposed variation will not result in the loss of views; nor will it result in adverse amenity impacts than that which would occur because of a complying building envelope;
- The proposed development, contributes to achieving the objects of the EP&A Act which includes the promotion and co-ordination of the orderly and economic use and development of land.

For these reasons, the proposed variation to the FSR standard should be supported as part of the assessment of this DA.

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