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Dear Ms McNally

CLAUSE 4.6 REQUEST – JUSTIFICATION FOR CONTRAVENTION OF CLAUSE 7.8 - PARRAMATTA LEP 2011 DEVELOPMENT APPLICATION 436/2016 – 4 & 6 PARRAMATTA SQUARE

Summary

1. This letter is a written request from Walker Corporation - the applicant for DA 436/2016 that seeks to justify the contravention of the percentage standards at Clause 7.8 in accordance with clause 4.6 of the *Parramatta Local Environmental Plan 2011*.
2. The objectives of the standard are not applicable to the subject DA, however, the development is consistent with the zone objectives and the proposed development would be in the public interest.
3. There are sufficient environmental grounds to justify contravening the development standard.
4. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.
5. The Secretary (of the Department of Planning and Environment) can be assumed to have concurred to the variation.

The proposal and the site

6. The proposed development is for the erection of commercial towers, retail space and basement parking at 12 -28 Darcy Street, 30 – 38 Darcy Street, 1A Civic Place and 162 Church Street, Parramatta. The site is known as 4 & 6 Parramatta Square (**the site**).
7. The proposed development of the site will comprise the JPW Design competition winning scheme and will form the most significant commercial development in the \$2 billion Parramatta Square redevelopment.
8. The site is subject to *Parramatta Local Environmental Plan 2011* (**the LEP**).
9. The development has a gross floor area (**GFA**) of 122,236m². Of this gross floor area – 4 Parramatta Square has a GFA of 75,108m² and 6 Parramatta Square has a GFA of 47,128m².
10. The development footprint of 6 Parramatta Square, the western most building, is partially located within 'Area 3' on the [Special Provisions Area Map](#) of the LEP which results in clause 7.8 of the LEP applying to that part of the building.

The development standard

11. Council's letter to Walker dated 29 August 2016 confirms that the standards at clause 7.8 are development standards. The letter in part reads:*"if you are not proposing to comply with the development standards contained in clause 7.8(2)(a) and (b) a written request is required that seeks to justify the contravention of the development standards in accordance with the provisions of clause 4.6.*
12. Clause 7.8 of the LEP reads:

7.8 Development on land at 160 – 182 Church Street, Parramatta

(1) This clause applies to land marked "Area 3" on the [Special Provisions Area Map](#).

(2) Despite clauses 4.3, 4.4 and 7.10 (5), the consent authority may grant consent to development on land to which this clause applies, but only if the consent authority is satisfied that the gross floor area of any resulting building will not be greater than 95,000 square metres and of that gross floor area:

- (a) not less than 10% will be used for common areas such as common rooms, communal gardens, corridors, foyers and recreation facilities (indoor), and
- (b) not less than 5% will be used for private open space.

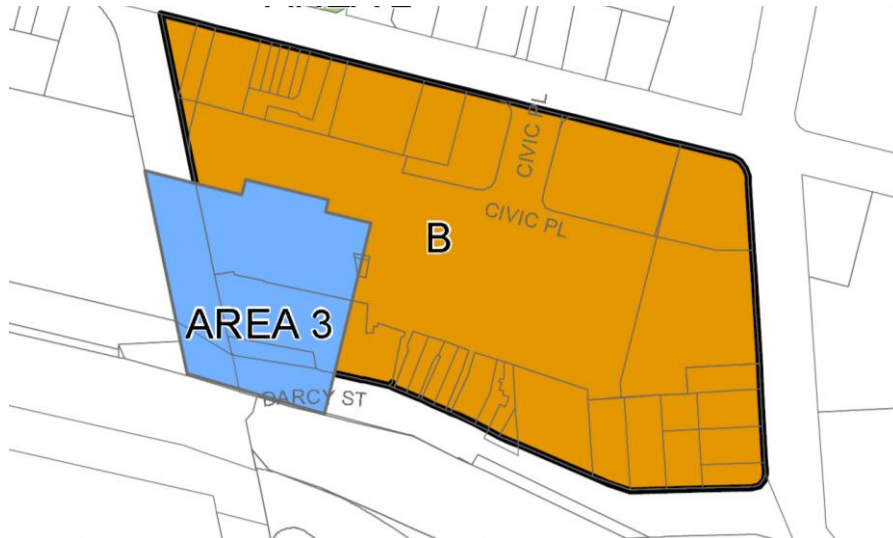


Figure 1 – 'Area 3' on the Special Provisions Area Map

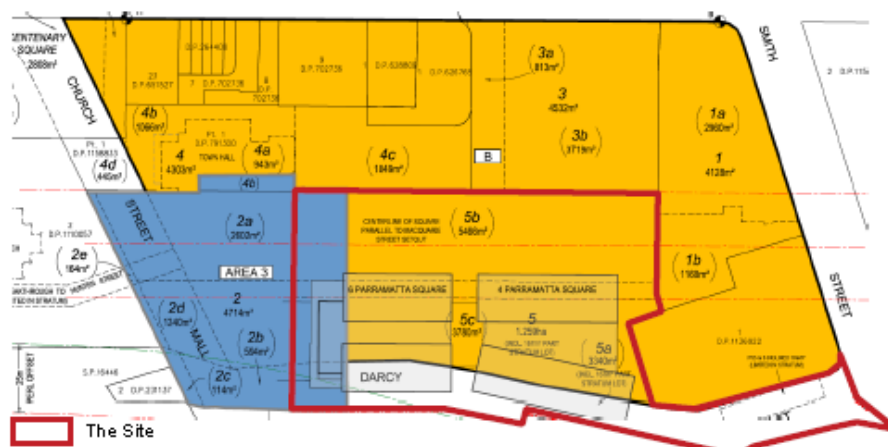


Figure 2 – Extent to which 6 Parramatta Square is affected by 'Area 3'

13. The amount of GFA under DA 436/2016 within 'Area 3' is 7,634m². Pursuant to Clause 7.8 the 10% control for common areas would be equivalent to 763.40m² and the 5% control for private open space would be equivalent to 381.70m². Compliance cannot be achieved with these controls because of the commercial nature of the proposed use.
14. Clause 7.8 and 'Area 3' were introduced as part of Amendment 10 to the *Parramatta Local Environmental Plan 2011* in December 2015, following the approval of Planning Proposal PP_2013_PARRA_001_00. The Planning Proposal was for the Aspire residential tower at 160 – 182 Church Street, Parramatta (now referred to as 8 Parramatta Square) and sought site specific provisions to ensure the residential amenity of a future residential and hotel tower.
15. Common areas such as communal gardens and indoor recreation facilities; and private open space are amenities associated with a residential development. These terms are referenced in the Apartment Design Guide. By way of example - *communal open space* is defined under the Apartment Design Guide as: "outdoor space located within the site at ground level or on a structure that is within common ownership and for the recreational use of residents of the development. Communal open space may be accessible to residents only, or to the public." *Private open space* is defined under the Apartment Design Guide as: "outdoor space located at ground level or on a structure that is within private ownership and provided for the recreational use of residents of the associated apartment." Note the use of the word –'residents.'
16. The site specific controls for Area 3 permit 95,000m² of gross floor area (GFA) on the basis that a minimum amount of common area and private open space be provided for residents of the development. The Planning Proposal specifically included a GFA cap rather than a FSR control. The drawing of 'Area 3' boundary generally corresponds to the site area of the 'Aspire' Proposal for the purpose of the [Special Provisions Area Map](#) of the LEP.
17. However, since the LEP was amended, design development has been undertaken which has resulted in the floorplates of the commercial towers 4 and 6 being expanded to offer large, campus style floor plates to attract major tenants and the residential tower – 8 PSQ (the former Aspire Tower) being moved about 20 metres to the west to provide the necessary separation between commercial and residential uses required under the planning controls.
18. As a result, the development footprint of 6 Parramatta Square, the western most building, is partially located within 'Area 3' on the [Special Provisions Area Map](#) of the LEP which results in clause 7.8 of the LEP applying to that part of the building. Compliance can easily be achieved with the requirement of clause 7.8(2) that any resulting building in 'Area 3' will not be greater than 95,000 square metres. DA 436/2016 has 7,634m² within 'Area 3,' leaving 87,366m² to be utilised for the residential DA, namely 8PSQ which will occupy the remainder of 'Area 3.' The 8 PSQ DA is proposing a GFA of approximately 67,000 square metres of GFA.
19. It is impossible for DA 436/2016 to comply with clauses 7.8(2)(a) and 7.8(2)(b). DA 436/2016 is for a commercial development. The development standards for common areas and private open space at clause 7.8(2) (a) and 7.8(2)(b) are relevant to a residential development and are not relevant to a commercial development.

The variation sought

20. For the development to be approved, a variation below the minimum of 10% to be used for common areas such as common rooms, communal gardens, corridors, foyers and recreation facilities (indoor) is required, and a variation below the minimum of 5% to be used for private open space is required.
21. The percentage variation sought is 0%.

The terms of clause 4.6

22. Development consent may be granted to the proposed development (despite the noncompliance with minimum percentage standards for common areas and private open space) if a variation to the standards at clause 7.8(2)(a) and 7.8(2)(b) are approved under clause 4.6 of the LEP.
23. Clause 4.6 of the LEP reads:

4.6 Exceptions to development standards

- (1) the objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
 - (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
 - (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 Secretary has been obtained.
 - (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.
 - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environment Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
 - (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
 - (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building, to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for land on which such a building is situated,
 - (c) clause 5.4,
 - (d) a development standard that relates to the height of a building, or a floor space ratio, in Parramatta City Centre (as referred to in clause 7.1 (1)) by more than 5%.
24. The development standards at clause 7.8(2)(a) and 7.8(2)(b) are not expressly excluded from the operation of clause 4.6. The consent authority may grant consent for the development even though the development would contravene the development standards at clause 7.8(2)(a) - 10% common areas and 7.8(2)(b) - 5% private open space of the LEP.
25. This letter is a written request from the applicant that seeks to justify the contravention of the 10% common areas standard and 5% private open space standard in accordance with clause 4.6.
26. Clause 4.6 is an appropriate and frequently applied mechanism to ensure planning rules have appropriate levels of flexibility where the circumstances warrant it.
27. Clause 4.6 (8)(d) is not applicable to the subject development application. The clause applies to the height of a building or a floor space ratio. The standards at clause 7.8(2)(a) and 7.8(2)(b) are expressed as percentages which translate into GFA. The standards at clause 7.8(2)(a) and 7.8(2)(b) require a minimum gross floor area for common areas and private open space. Clause 7.8 is not a development standard relating to the height of a building, or a floor space ratio. Accordingly, the 5% tolerance at clause 4.6(8)(d) is not applicable and thus, the variation sought is not constrained numerically.

Consistency with the objectives of the standard and objectives for development within the zones

28. The proposed development will be in the public interest because it does not undermine the intent of the standards and is consistent with the zone objectives. The reasons why are set out below.
29. The objectives of the standards for 10% common areas and 5% private open space are not expressly stated in the LEP, however it is self-evident that the intent of the standards at clause 7.8(2)(a) and 7.8(2)(b) are to maintain residential amenity within a residential development in 'Area 3.'
30. As DA 436/2016 is for a commercial development the underlying objective or purpose of the standards is not relevant to the development. Therefore, the requirement that the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard are not applicable.
31. If development consent were to be granted to the variation of the standards at clause 7.8(2)(a) and 7.8(2)(b) for DA 436/2016 it would not preclude a residential development within "Area 3" from complying with the provisions of clause 7.8, i.e. "any resulting building will not be greater than 95,000 square metres and of that gross floor area: (a) not less than 10% will be used for common areas and (b) not less than 5% will be used for private open space." This has been demonstrated as part of the architectural design competition held for 8 Parramatta Square in March 2016 on the footprint of the reduced 'Area 3.' The winning design by Bates Smart was able to satisfy the provision of Clause 7.8.



Figure 3: Footprint of winning design by Bates Smart

32. Furthermore, it can also be demonstrated with the development application under preparation for 8 Parramatta Square. The DA proposes a GFA of approximately 67,000m² with 12.5% of the GFA being provided as common areas and 8.25% as private open space.
33. The site is zoned B4, with a minor portion zoned B3. The objectives for these zones are set out in the Land Use Table at the end of Part 2 of the LEP.

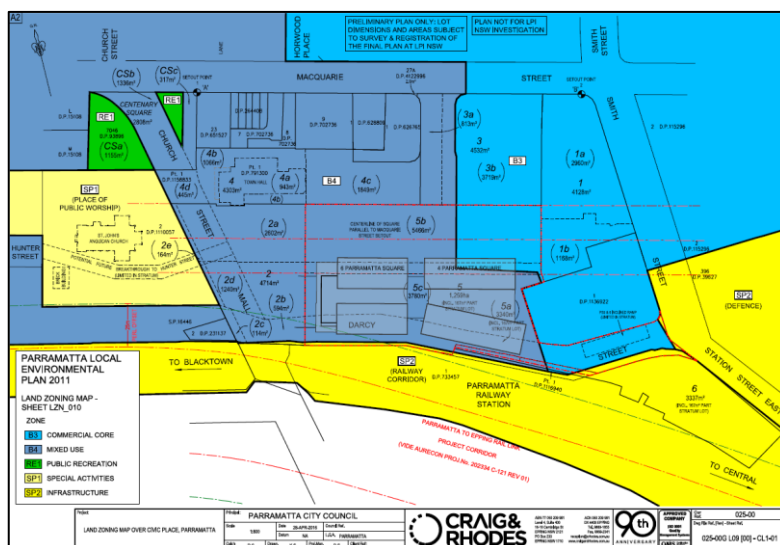


Figure 4: Zones over the site

34. The objectives for the B4 Mixed Use zone are as follows:

- To provide a mixture of compatible land uses.
- 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.
- To encourage development that contributes to an active, vibrant and sustainable neighbourhood.
- To create opportunities to improve the public domain and pedestrian links.
- To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.
- To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.

35. The objectives for the B3 Commercial Core zone are as follows:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To strengthen the role of the Parramatta City centre as the regional business, retail and cultural centre, and as a primary retail centre in the Greater Metropolitan Region.
- To create opportunities to improve the public domain and pedestrian links throughout the Parramatta City Centre.
- To provide for the retention and creation of view corridors.
- To protect and enhance the unique qualities and character of special areas and heritage values within the Parramatta City Centre.
- To protect and encourage accessible city blocks by providing active street frontages, and a network of pedestrian-friendly streets, lanes and arcades.

36. The proposed development is consistent with the zone objectives for the following reasons:

- It provides a mixture of compatible land uses (being commercial and retail).
- It integrates suitable business, office and retail development in an accessible location so as to maximise public transport patronage and encourage walking and cycling. The proximity of the Parramatta train station, the bus interchange, Parramatta Westfield and the surrounding shopping district make it plain that the location is appropriate and accessible. The proposed development is designed to respond to and integrate with these features.
- It similarly encourages appropriate employment opportunities in accessible locations.
- The development contributes to an active, vibrant and sustainable neighbourhood. It achieves this with its relationship to Parramatta Square and Darcy Street. It also does this by maximising active frontages. Other than openings for pedestrian circulation, the retail frontage to Parramatta Square is continuous and can be configured in a variety of formats to suit different food and beverage offerings. The upper ground level slab edge projects along the northern frontage to Parramatta Square to provide a protected zone for pedestrians along this edge.
- The development creates opportunities to improve the public domain, pedestrian links and view corridors.
- The development provides for the daily commercial needs of the locality.
- The development protects and enhances the unique qualities and character of special areas within the Parramatta City Centre.

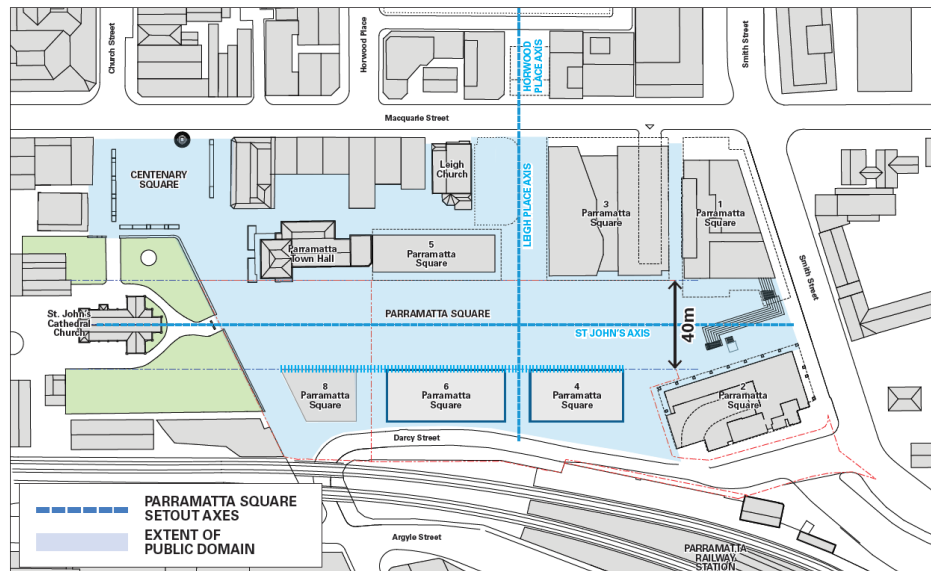


Figure 5: Relationship between the proposed development and St John Cathedral Church and its setting

- The proposed development strengthens the role of the Parramatta City Centre as a regional business, retail and cultural centre. The two key ways that it does this is by:
 - Firstly, improving Parramatta's CBD offer in terms of large floor plates and providing a new opportunity to attract high status commercial tenants to the locality;
 - Secondly, providing for a dense centre of employment which will, in turn, provide new customers to support the CBD's development as a high quality shopping destination.
- The development protects and enhances the desirable qualities and the heritage values within the Parramatta City Centre.

Compliance unreasonable or unnecessary

37. Compliance with the development standards are unreasonable or unnecessary in the circumstances of this case. We say this for three reasons.
38. Firstly, the standards are not relevant to the development. The standards have been formulated to apply to a residential development. It would be unreasonable and unnecessary to apply the standard to the commercial development given the nature of the proposed variation, the site specific context and the design of the proposed development.
39. Secondly, if the standards were to be applied to DA 436/2016 it will result in site specific provisions intended for residential uses being applied to commercial uses and will create confusion in the planning process.
40. Thirdly, it would be unreasonable and unnecessary to apply the standards because it would be tantamount to a refusal of the development application; an outcome which would undermine the achievement of the aims of the LEP, in particular:
 - Clause 1.2(2)(a): "to encourage a range of development, including housing, employment and recreation, that accommodates the needs of the existing and future residents, workers and visitors of Parramatta."
 - Clause 1.2(2)(b): "to foster environmental, economic, social and physical wellbeing so that Parramatta develops as an integrated, balanced and sustainable city."
 - Clause 1.2(2)(m): "to protect and enhance the viability, identity and diversity of the Parramatta City Centre and recognise it as the pre-eminent centre in the Greater Metropolitan Region."

Environmental planning grounds

41. Studies prepared by JPW for DA 436/2016 indicate that partially locating the footprint of 6 Parramatta Square within 'Area 3' would best balance the commercial viability of the floor plates for development of 4 and 6 Parramatta Square without compromising the efficiency or amenity of development at 8 Parramatta Square.
42. There are no significant adverse impacts arising from the non-compliance which provides sufficient environmental planning grounds to justify contravening the standard.

Concurrence of the Secretary

43. The Secretary of the Department of Planning and Environment can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. The circular informs councils that arrangements for the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts clause 4.6 of the Standard Instrument or a similar clause providing for exceptions to development standards. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.
44. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

Conclusion

45. The requested variation of clause 7.8(2)(a) and 7.8(2)(b) will not set an undesirable precedent for other sites in Parramatta because the clause is site specific.
46. Support for the variation of the standard would enable the efficient redevelopment of three key sites in Parramatta Square – 4 Parramatta Square, 6 Parramatta Square and 8 Parramatta Square, being the central and largest development transforming Parramatta into Sydney's premier western Central Business District.
47. In light of the above it is requested that Council and the JRPP grant development consent for the proposed development even though it contravenes the common areas and private open space standards imposed by clause 7.8(2)(a) and 7.8(2)(b) of Parramatta LEP 2011.

Yours sincerely



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