

## REQUEST FOR AN EXCEPTION TO THE FLOOR SPACE RATIO DEVELOPMENT STANDARD

### Introduction

This request for an exception to a development standard is submitted in respect of the floor space ratio development standard contained within Clause 4.4(2) of the Parramatta Local Environmental Plan 2011 (PLEP 2011). The request relates to an application for the erection of a residential development at Lot 5, 158-164 Hawkesbury Road and 2A Darcy Road, Westmead.

### Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the PLEP 2011 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP 2011 or any other environmental planning instrument.

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the floor space ratio development standard be varied.

### Development Standard to be varied

Clause 4.4 states:

- (1) The objectives of this clause are as follows:
  - (a) to regulate density of development and generation of vehicular and pedestrian traffic,
  - (b) to provide a transition in built form and land use intensity within the area covered by this Plan,
  - (c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,
  - (d) to reinforce and respect the existing character and scale of low density residential areas.
- (2) 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.

Floor space ratio is defined under Clause 4.5 of the PLEP as:

"the ratio of the gross floor area of all buildings within the site to the site area."

There are two maximum floor space ratio controls shown for the land on the Map for the site to which the proposed development relates being 4.0:1 in area 'X1' and 1.5:1 in area 'S1'.

#### Extent of Variation to the Development Standard

The allowable gross floor area under the approved Stage 1 Concept Plan was 42,470 square metres for Lot 5, and 122,995 square metres for the overall site. The proposal provides a gross floor area of 42,470 square metres and a floor space ratio of 4.52:1 which exceeds the floor space ratio development standards of 1.5:1 and 4:1 which apply to the site.

However, the Stage 1 development consent identified that the entire site benefitted from a total gross floor area of 122,995 square metres and sought to redistribute this gross floor area to individual sites in a manner which when combined did not exceed this total quantum despite the fact that the FSR control would be exceeded on some individual Lots. The Stage 1 development consent allocated 42,470 square metres of gross floor area to the subject site and the proposed gross floor area matches this figure.

#### Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

The Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 has recently required additional ways of establishing that compliance is unreasonable or unnecessary beyond consistency with the standard and zone objectives to be established. For completeness, this request addresses the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

##### 1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

The specific objectives of the floor space ratio development standard, as specified in clause 4.4(1) of the Parramatta Local Environmental Plan 2011 are identified below. A comment on the proposal's consistency with each objective is also provided.

- (a) to regulate density of development and generation of vehicular and pedestrian traffic,

The approval of the Stage 1 Concept Plan recognised that the density proposed across the overall site was consistent with the density permitted pursuant to PLEP despite the individual allotments exceeding the permissible FSR. The density proposed on Lot 5 is consistent with the density approved under the Stage 1 Concept Plan. The application is accompanied by a Traffic and Parking Assessment which finds that the proposed development has good access to public transport and the traffic generated from the redevelopment of the site will not exceed the projected impacts of the residential component as outlined in the UWS Transport Assessment and therefore would not require any further remedial works to the accesses or surrounding road network. Further, the redevelopment of the overall site provides for a high level of pedestrian permeability and creates new linkages between the railway station and nearby schools and hospitals and a high level of connectivity with the existing urban fabric.

- (b) to provide a transition in built form and land use intensity within the area covered by this Plan,

The proposed development is consistent with the density that was approved as part of the Stage 1 Concept Plan. The approval of the Stage 1 Concept Plan recognised the environmental capacity of the overall site having regard to its favourable location in proximity to a range of public transport and employment options. The proposed development will allow for a transition in built form and land use intensity commensurate with PLEP.

- (c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,

The proposed distribution of built form and massing of the buildings across the site is the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will provide an appropriate curtilage to the heritage significant buildings located to the east. The height of the buildings increase away from the heritage significant buildings and are at their highest at the furthestmost point from these buildings. The proposed materials and finishes have been chosen to compliment the St Vincent's Building with face brickwork proposed for the part of the development in close proximity to the heritage building. The proposed development will have an acceptable impact on views to and from heritage items. Overall the proposal will have an acceptable impact on the heritage significance of nearby heritage items and their settings.

- (d) to reinforce and respect the existing character and scale of low density residential areas.

Low density residential development is located to the south of the site on the opposite side of the railway corridor and with frontage to Alexandra Avenue. Lot 5 is visually isolated from the low density residential development with frontage to Alexandra Avenue given the width of the railway corridor and the dense landscaping that surrounds the railway corridor. The level of separation between the subject site and nearby low density residential development will ensure that the character of these areas are respected and not unreasonably compromised by the proposed development.

**2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

The underlying objectives and purpose of the floor space ratio control is relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the proposed floor space ratio still results in a development which is consistent with the desired future character for the subject site and the Westmead precinct generally, conserves the significance of the existing heritage buildings and sits comfortably within the context of the site with no significant adverse impacts to adjacent properties.

**3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

The underlying objective of the floor space ratio control is to achieve an appropriate density on the site which is compatible with the context of the site. Due to the design, location and configuration of the proposed development, the proposal successfully achieves these objectives and will provide a considered built form response that will deliver a positive urban design outcome. However, strict compliance with the floor space ratio control would likely lead to a less satisfactory outcome as it would

result a development which fails to fulfil the environmental capacity of the site and would result in an inferior built form that would be contextually inappropriate. Accordingly, it is considered that strict compliance would likely defeat the underlying objective or purpose of the floor space ratio control because it would encourage a less desirable outcome for the site.

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;**

Council has historically adopted a relatively flexible approach to the implementation of the floor space ratio development standard in circumstances where the objectives of the control are achieved. The approval of the Stage 1 Concept Plan (DA/571/2014) for the overall site relied on variation to the floor space ratio standard to allow for 42,470 square metres for the site and Council have effectively abandoned the control as it relates to individual allotments within the broader site.

5. **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.**

The proposed zoning of the land is considered to be reasonable and appropriate.

Strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case in that:

- The floor space ratio controls applicable to the overall site fail to provide for the provision of roadways and open space which are critical to the successful functionality of the overall site. The approval of the Stage 1 Concept Plan recognised that the density proposed across the overall site was consistent with the density permitted pursuant to PLEP despite the individual allotments exceeding the permissible floor space ratio. In this regard, Council have effectively abandoned the FSR provisions in the LEP as they relate to the individual allotments approved under the Stage 1 development consent in preference for the allocation of a quantum of gross floor area to each allotment. The density proposed on Lot 5 is consistent with the density approved under the Stage 1 Concept Plan.
- The proposed distribution of built form and massing of the buildings across the site is the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will provide an appropriate curtilage to the heritage significant buildings located on the site.
- The proposal will deliver a high quality transit orientated development that will increase the vibrancy of the precinct.
- The proposal is consistent with the desired future character outlined within PDOP 2011 for the subject site and the Westmead precinct generally.
- The density proposed does not prevent achievement of the 9 principles of SEPP 65.
- There are no unacceptable adverse impacts in terms of shadow, view, visual and acoustic privacy impacts resulting from the proposed variation to the floor space ratio development standard which would warrant strict compliance.
- The proposed density will not result in an acceptable impact on local traffic conditions.
- The proposed variation allows for the most efficient and economic use of the land.
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.

- Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.

As the proposal is consistent with the objectives of the floor space control, compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

**Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?**

The following environmental planning grounds are sufficient to justify contravention of the development standard:

- The proposed gross floor area complies with the allocated gross floor area under the Stage 1 development application.
- The proposal will deliver a high quality transit orientated development that will increase the vibrancy of the precinct whilst providing a greater diversity of housing to meet the demand generated by changing demographics and housing needs in an existing urban area with excellent access to public transport, health services, educational establishments, recreational opportunities and services and facilities.
- The proposed distribution of built form and massing of the buildings across the site is the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will provide an appropriate curtilage to the heritage significant buildings located on the site.
- Apartments within the development are provided with a high level of amenity.
- The development provides the required provision of car parking and will have an acceptable impact on local traffic conditions.
- There are no adverse impacts in terms of shadow, view, visual and acoustic privacy impacts resulting from the proposed variation to the floor space ratio development standard which would warrant strict compliance.

Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public and in this particular circumstance there are sufficient environmental planning grounds to warrant the proposed variation to the floor space ratio controls as the proposal will achieve a superior outcome with a higher level of residential amenity within the site and without any significant adverse impact to adjacent sites.

**Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)**

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

These matters are comprehensively addressed above in this written request with reference to the five part test described in Wehbe v Pittwater Council [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless 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 and the objectives for development within the zone in which the development is proposed to be carried out.

Whilst the objectives of the development standard have already been addressed previously in this written request, for the purpose of completeness these objectives are again considered below in specific reference to Clause 4.6(4)(a)(ii).

### Objective of the Development Standard

The specific objectives of the floor space ratio development standard, as specified in clause 4.4(1) of the Parramatta Local Environmental Plan 2011 are identified below. A comment on the proposal's consistency with each objective is also provided.

(a) to regulate density of development and generation of vehicular and pedestrian traffic,

The approval of the Stage 1 Concept Plan recognised that the density proposed across the overall site was consistent with the density permitted pursuant to PLEP despite the individual allotments exceeding the permissible FSR. The density proposed on Lot 5 is consistent with the density approved under the Stage 1 Concept Plan. The application is accompanied by a Traffic and Parking Assessment which finds that the proposed development has good access to public transport and the traffic generated from the redevelopment of the site will not exceed the projected impacts of the residential component as outlined in the UWS Transport Assessment and therefore would not require any further remedial works to the accesses or surrounding road network. Further, the redevelopment of the overall site provides for a high level of pedestrian permeability and creates new linkages between the railway station and nearby schools and hospitals and a high level of connectivity with the existing urban fabric.

(b) to provide a transition in built form and land use intensity within the area covered by this Plan,

The proposed development is consistent with the density that was approved as part of the Stage 1 Concept Plan. The approval of the Stage 1 Concept Plan recognised the environmental capacity of the overall site having regard to its favourable location in proximity to a range of public transport and employment options. The proposed development will allow for a transition in built form and land use intensity commensurate with PLEP.

(c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,

The proposed distribution of built form and massing of the buildings across the site is the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will provide an appropriate curtilage to the heritage significant buildings located to the east. The height of the buildings increase away from the heritage significant buildings and are at their highest at the furthestmost point from these buildings. The proposed materials and finishes have been chosen to compliment the St Vincent's Building with face brickwork proposed for the part of the development in close proximity to the heritage building. The proposed development will have an acceptable impact on

views to and from heritage items. Overall the proposal will have an acceptable impact on the heritage significance of nearby heritage items and their settings.

(d) to reinforce and respect the existing character and scale of low density residential areas.

Low density residential development is located to the south of the site on the opposite side of the railway corridor and with frontage to Alexandra Avenue. Lot 5 is visually isolated from the low density residential development with frontage to Alexandra Avenue given the width of the railway corridor and the dense landscaping that surrounds the railway corridor. The level of separation between the subject site and nearby low density residential development will ensure that the character of these areas are respected and not unreasonably compromised by the proposed development.

### Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B4 Mixed Use zone which has the following objectives:

- 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.

The vision for the overall site as outlined in the Master Plan that accompanied the Stage 1 development application has been for a transit-oriented development that intensifies and diversifies activity around public transport infrastructure allowing for multiple activities and services, local employment and diverse housing options. The site is extremely well located in terms of access to public transport infrastructure with the T-Way and Westmead railway station located in close proximity. The proposed residential development on Lot 5 will deliver additional housing choice within a regionally significant health and education hub that is in close proximity to a range of recreational opportunities and services and facilities and will maximise public transport patronage, cycling and walking.

The architecture of the development with buildings orientated where possible to the street and toward an internal common landscaped open space, combined with the development being set within a high quality public domain will result in activated and vibrant places that are used at all times of the day, increasing safety. The redevelopment of the overall site has been designed to provide a high level of pedestrian permeability and creates new linkages between the railway station and nearby schools and hospitals and a high level of connectivity with the existing urban fabric. The proposal exhibits a high level of environmental performance, provides a high level of amenity and an attractive contemporary architectural expression.

For the reasons given the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone.

### Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

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

The architectural package prepared by Turner Architects which accompanies the subject application illustrates the relationship of the proposed development within the context of the site. It demonstrates a high quality outcome for the site which will result in the delivery of an integrated community of buildings with significant separation set around a central open space area which collectively will contribute significantly to the amenity afforded to the general public and future occupants alike.

Allowing the flexible application of the floor space ratio development standard in this instance is not only reasonable but also desirable given the context of the site and that the site has the environmental capacity to absorb the proposed density.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the floor space ratio development standard will achieve a better urban design outcome in this instance in accordance with objective 1(b).

### Conclusion

The proposed variation to the floor space ratio development standard contained within clause 4.4(2) of the Parramatta Local Environmental Plan 2011 has been found to be reasonable and necessary in the circumstances of the case. In addition there are sufficient environmental planning grounds to justify the variation. In this regard it is reasonable and appropriate to vary the floor space ratio development standard to the extent proposed.