

# ETHOS URBAN

## Clause 4.6 Variation to Development Standard – Floor Space Ratio

164 Hawkesbury Road, Westmead

Submitted to Paramatta City Council  
On behalf of Western Sydney University

29 November 2018 | 218313



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## 1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Western Sydney University (WSU). It is submitted to Paramatta City Council (the Council) in support of a Crown Development Application (DA) for a mixed-use development proposed at 164 Hawkesbury Road, Westmead.

Clause 4.6 of the *Paramatta Local Environmental Plan 2011* (PLEP) enables Council to grant consent for development even though the development varies 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.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that varies a development standard. These three matters are detailed below:

- that the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has established a set of factors to guide the assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a). Further guidance on clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

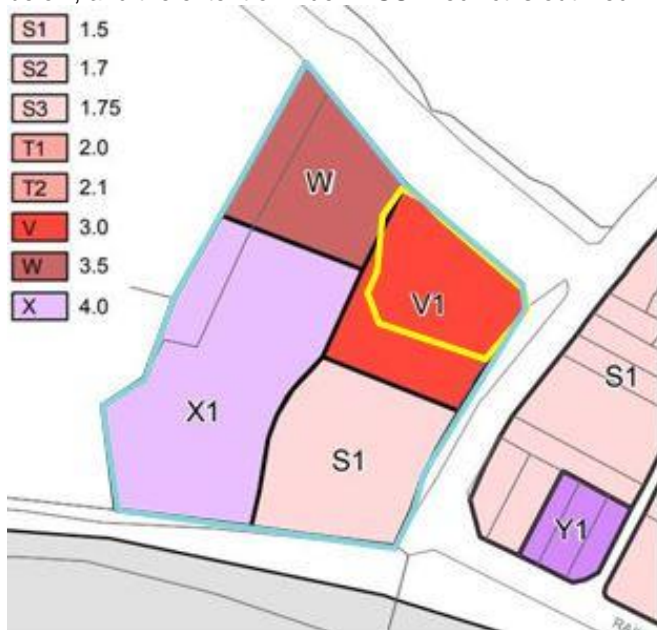
- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the Secretary is required to consider before providing concurrence (**Section 7.0**).

This Clause 4.6 variation request relates to the development standard for Floor Space Ratio (FSR) under Clause 4.4 of the PLEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated November 2018. This Clause 4.6 variation request demonstrates that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

## 2.0 Development standard to be varied

The FSR controls for the site and the broader WSU Westmead Precinct are established by Clause 4.4 of the PLEP 2011. The permissible FSR across the precinct varies from 1.5:1 to 4:1 with the majority of the subject site allocated an FSR of 3:1 and a very minor sliver of the site having an FSR of 3.5:1 (as illustrated in Figure 1 and Figure 2). For ease of reference we have considered the development standard being varied as 3:1.

For the avoidance of doubt, the site the subject of the development application is outlined in yellow in the figures below, and the extent of wider WSU Precinct is outlined in light blue.



**Figure 1: FSR map extract**

Source Parramatta LEP 2011



**Figure 2: LEP Map and subdivision overlay**

Source: Cox

### 3.0 Nature of the variation sought

The site was subdivided from the wider WSU campus site as part of DA/571/2014, which was approved in February 2015. As part of DA/571/2014 the precinct was subdivided into 5 lots, roads and open spaces were approved for construction, and building envelopes were approved for each lot including quantities of floor space and specific land uses.

In relation to the subject site (Lot 2) DA/571/2014 approved a building envelope with a height of nine storeys, and with a total GFA of 30,700m<sup>2</sup> to be used for commercial, retail, health and serviced apartment uses. This approved building envelope resulted in an FSR for Lot 2 of approximately 5.33:1 based on the site area associated with the approved subdivided lot at the time.

A Clause 4.6 variation request to the FSR development standard was submitted with DA/571/2014 as the subdivision pattern and building envelopes proposed did not neatly align with the various mapped FSRs for the precinct. The variation request submitted (and approved) outlined the fact that the precinct as a whole benefited from a total permissible GFA of 122,995m<sup>2</sup> (being a **precinct** FSR of 3:1), and noted that the total permissible floor across the precinct space was apportioned to each developable lot as part of the subdivision and building envelope application.

The justification for the approved variation of the FSR development standard was based on the fact that:

- the newly created lots within the precinct did not correspond with the LEP FSR boundaries as illustrated in **Figure 1**;
- that the FSR boundaries do not take into account the spatial requirements of roads, open space, and other areas of the site that cannot accommodate built form but that are necessary for the successful functioning of the precinct; and
- when considering the total quantum of floor space of all developable lots, the total floor space remained consistent with the maximum permissible floor space for the precinct, being 122,995m<sup>2</sup> (being a **precinct** FSR of 3:1).

The proposal the subject of this application seeks approval for the same amount of floor space as was approved with DA/571/2014, being 30,700m<sup>2</sup>. However, it is noted that the site area of Lot 2, being 5,694m<sup>2</sup> is marginally smaller than that which was shown with the proposed plan of subdivision at the time of DA/571/2014, being 5,753m<sup>2</sup> (being 59m<sup>2</sup> smaller).

As a result, the FSR of the proposed development is 5.39:1, constituting a variation of 80%. This is only a marginally greater variation compared to that approved with DA/571/2014 (being 5.33:1 and a 78% variation), despite the same amount of floor space being sought for approval. Accordingly, the increase in the variation is based on a technicality, being the result of a marginally smaller lot being used as the basis of the site area of the proposal.

## 4.0 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 ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis may be of assistance in applying clause 4.6 given that 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]).

The five methods outlined in *Wehbe* were:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
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 (**Fourth Method**).
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 (**Fifth Method**).

In this instance, the First Method and the Fourth Method are of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

### 4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of the development standard contained in Clause 4.4 of the PLEP are:

- (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.

The proposal is assessed against the objectives for the FSR development standard below.

#### Objective A – to regulate density of development and generation of vehicular and pedestrian traffic

The proposed development is the same density as that approved as part of DA/571/2014 and does not seek to achieve any more floor space within the precinct than permitted under the PLEP 2011. A requirement to observe the maximum FSR development standard as it applies to Lot 2 would effectively limit the permissible floor space on the site to 17,082m<sup>2</sup> (55% of that currently approved and proposed). Such an outcome would be inconsistent with the building envelopes approved as part of DA/571/2014 and would not appropriately regulate density on a site such as this, which is located adjacent to Westmead railway station. Accordingly, the proposed variation is consistent with this objective as the density of the development and generation of vehicular and pedestrian traffic can already be considered 'regulated' by the approved development.



The site's proximity to Westmead station allows this development to leverage the ability of future users of the site to take public transit to reduce the generation of vehicular traffic. In addition, it should be noted that the proposed development forms part of a wider re-development of the entire Westmead WSU campus. Pedestrian and vehicular traffic impacts of the wider precinct redevelopment were assessed as part of the DA/571/2014 and found to be appropriate.

The development now proposed is generally consistent with the intent of the approved DA/571/2014 (as it applied to Lot 2) and is the same in terms of the quantity of GFA delivered. The increased quantity of floor space (and therefore increased FSR) on Lot 2 above that governed by the FSR standard is offset by a reduced FSR elsewhere on the site – for example the areas set aside for public roads, open space and the scale of the development on Lot 1. Therefore, the traffic impact (both pedestrian and vehicular) has been assessed in its relevant context and found to be appropriate.

### **Objective B – to provide a transition in built form and land use intensity within the area covered by this Plan**

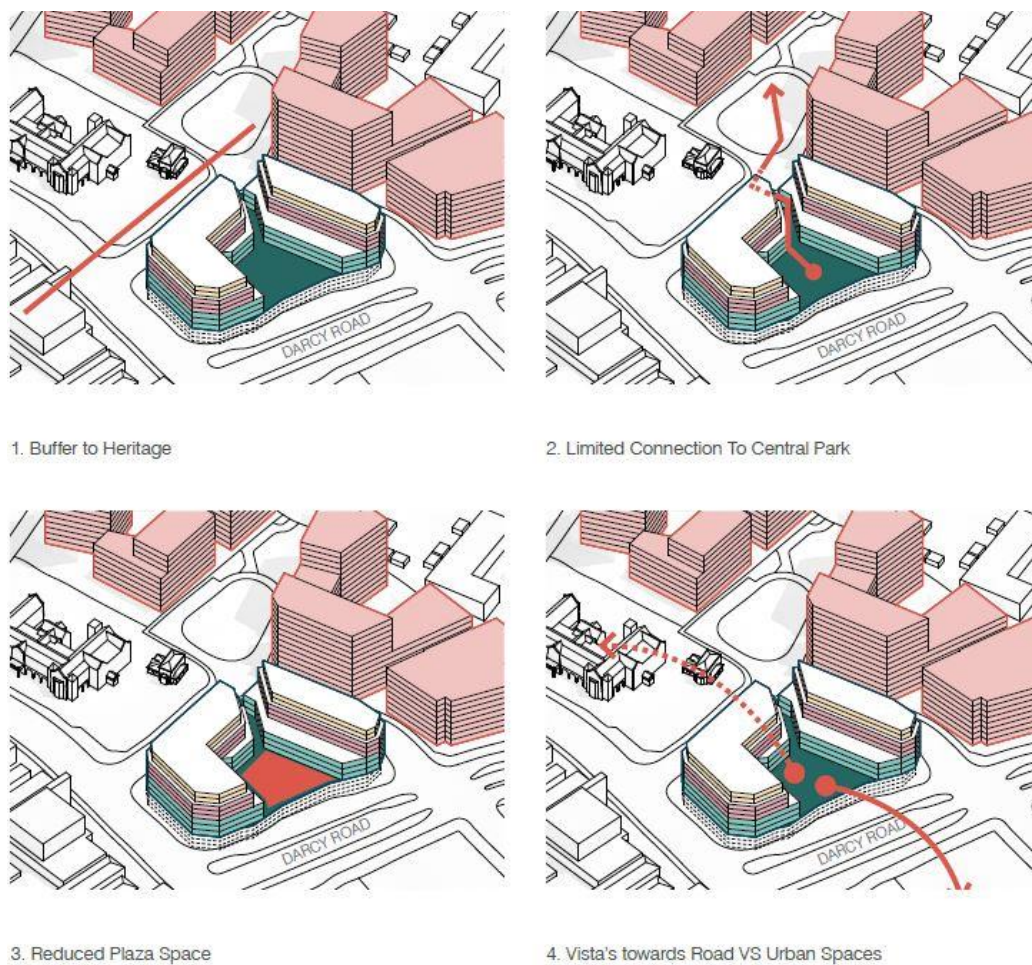
In preparing the plans for the proposal, Architectus built upon the work undertaken by Cox in the preparation of the development proposal for the WSU precinct associated with DA/571/2014. This proposal, the building envelopes of which were approved as part of DA/571/2014, envisaged two building which defined the street frontage on three sites of Lot 2, creating a plaza to the north of the site, fronting Darcy Road. Architectus' critique of this building form includes:

- The building form creates a barrier between the new plaza and the heritage asset on Lot 1;
- The plaza space is reduced by the presence of the building along the southern portion of the site;
- The building within the plaza area severs views to the south of the heritage building; and
- The building form as approved restricts the connections to the precinct's central park.

These observations are summarised in **Figure 3**.

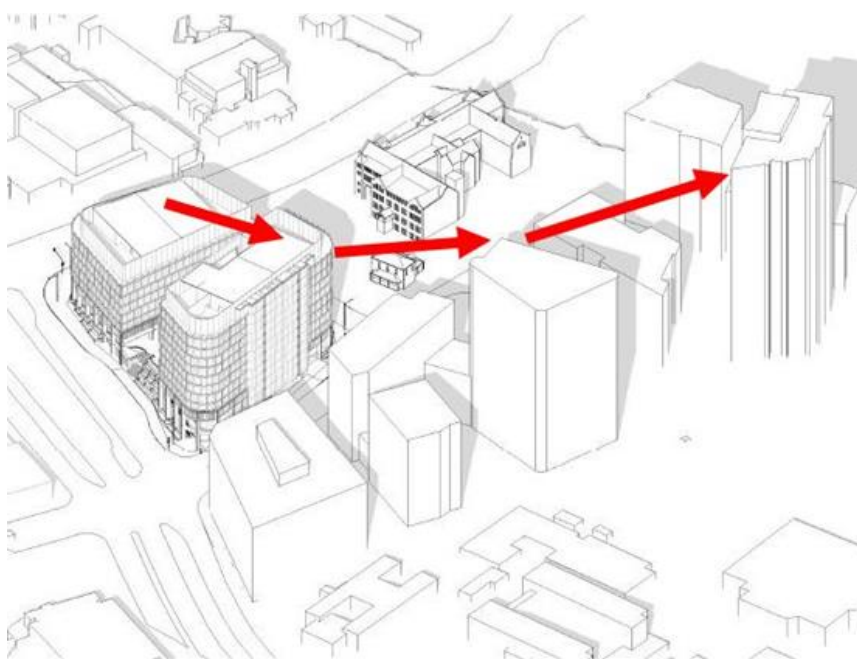
In addition to the improvements to the ground plane that have been proposed by Architectus, the building now proposed has evolved to have regard to the buildings that have been approved since the approval of DA/571/2014, notably the detailed designs of buildings on Lot 4 and Lot 5 within the WSU precinct. **Figure 4** illustrates how the floor area within the proposed development has been distributed to maintain the principle of a transition in height and scale from north east to the south west.

Overall, the proposed variation is consistent not only with this objective of the development standard but also with the variation approved for the approved building density on the site. Despite the variation, an appropriate transition in bulk and scale from the higher density areas of the WSU Campus precinct to the south of the site and the low-density residential areas to the north of the site is achieved, and an improved built-form outcome, when compared to that approved as DA/571/2014, is facilitated.



**Figure 3: Design critique of the approved envelopes under DA/571/2014**

Source: Architectus



**Figure 4: Transition in scale to the south west**

Source: Architectus

### **Objective C – to require the bulk and scale of future buildings to have regard to heritage sites and their settings**

As noted above, in recommending that consent be granted for DA/571/2014, Council endorsed (and the Sydney Planning Panel approved) 30,700m<sup>2</sup> of GFA on Lot 2. The development now proposed is consistent with this GFA outcome but has been the subject to refinements since the approval of DA571/2014. Following these refinements the building envelopes now contemplated have a much clearer and significant relationship to the neighbouring heritage buildings on Lot 1.

Architectus, the architects for the proposal, have critiqued the approved building envelopes in relation to the site's relationship with the neighbouring heritage buildings (see **Figure 3**), noting:

- The approved building form creates a barrier between the new plaza and the heritage asset on Lot 1; and
- The approved building within the plaza area severs views to the south of the heritage building.

It is noted that the FSR of Lot 1 is significantly less than that permissible (approximately 0.83:1 is present on the site, while 1.5:1 is permissible). This is a result of the decision to locate floor space elsewhere within the precinct in order to respect the heritage significance of the retained buildings. This decision was assessed, and approved, within the DA/571/2014, noting that the total floor space within the precinct is consistent with that envisaged by the planning controls. Accordingly, the siting of floor space within the precinct has had particular regard to the heritage item and to respect its curtilage on Lot 1. As discussed in **Section 3.0**, the FSR variation is largely attributable to this and to the newly created lots within the precinct not corresponding with the LEP FSR boundaries.

The bulk and scale of the proposed buildings has been developed with clear regard to the heritage building to south, opening up visual and physical connections to the item from Lot 2 (and constituting a significant improvement to the approved building envelope on the site in this regard).

### **Objective D – to reinforce and respect the existing character and scale of low density residential areas.**

The closest low-density residential area is located nearly 200m to the south of the site across the rail corridor. Accordingly, the proposed variation is consistent with this objective as it will have no impact on the character of this area.

#### **4.2 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 Method)**

On 11 February 2015, the Sydney West Joint Regional Panel approved DA/571/2014. In approving the DA, the Panel accepted large variations to the maximum building height and FSR controls established under the PLEP 2011 for the four development lots (Lot 2-5) but consistent with the maximum FSR for the precinct. As part of DA/571/2014, consent was granted for building envelopes on Lot 2 which would provide 30,700m<sup>2</sup> of GFA. This is a 78% increase over the 17,082m<sup>2</sup> that would otherwise be permissible on the site under the provisions of the PLEP 2011 if looked at in isolation. The development now proposed provides a total GFA which is consistent with this approval<sup>1</sup>.

Since granting consent for the sizable departure from the relevant development standard included as part of DA/571/2014, the Sydney West Joint Regional Panel has also granted consent for development on Lot 4 and Lot 5 within the WSU precinct. In their assessment of the DA for Lot 4 (DA/271/2016), Council noted that:

*Council's Urban Designers, City Architect and DEAP acknowledge that the current FSR and height controls applying to the site under the LEP and DCP were not well resolved under the original ARUP Masterplan.*

*The Stage 1 Masterplan approved under the DA/571/2014 improves the original design for WSU and Lot 4. However, upon further design analysis by the applicant including detailed modelling incorporating the ADG's and design controls contained in the PDCP 2011, it was deemed that further departures were required to realise the development potential for the site, in particular the height for Lot 4 in a manner that did not unduly impact on the quality of the final outcome.*

<sup>1</sup> And only a minor increase in FSR, as discussed in Section 3.0, resulting from the minor reduction in site area.

In their assessment of the application in relation to Lot 5 (DA/968/2016), Council also noted that:

*Council's Urban Designers, City Architect and DEAP acknowledge that the current FSR and height controls applying to the site under the LEP and DCP were not well resolved under the original ARUP Masterplan.*

*The Stage 1 Masterplan approved under the DA/571/2014 improves the original design for WSU and Lot 5. However, upon further design analysis by the applicant including detailed modelling incorporating the ADG's and design controls contained in the PDCP 2011, it was deemed that further departures were required to realise the development potential for the site, in particular the height for Lot 5 in a manner that did not unduly impact on the quality of the final outcome.*

*The FSR and height controls for the site were informed by the ARUP masterplan. However, upon review, this masterplan has since been considered by Council's Urban Designers, City Architect and DEAP as being suboptimal as the height and FSR identified do not correlate.*

The actions of the Panel (and by extension, Council) in approving not only DA/571/2014 but also the subsequent DAs for Lot 4 (DA/271/2016) and Lot 5 (DA/968/2016), have effectively abandoned the FSR development standard within the PLEP 2011 as it applies to the individual lots within the WSU Precinct, and therefore, compliance with this standard is considered both unreasonable and unnecessary.



## 5.0 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the PLEP requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

*That there are sufficient environmental planning grounds to justify contravening the development standard.*

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. 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 v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the FSR control as it applies to the site. 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. The applicable circumstances that relate to the site are discussed below.

The site is located in close proximity to an existing rail station and is being redeveloped as part of a broader redevelopment of the WSU campus at a scale and density consistent with the maximum FSR for the precinct. It is also located in close proximity to future Stage 1 Parramatta Light Rail project and the envisaged Sydney Metro West, where a station has been earmarked for Westmead. As such, the impact of the density proposed by the development is both appropriate to the site and its proximity to transport infrastructure, and has also been able to be assessed holistically, as part of the redevelopment of the whole precinct.

Furthermore, the proposed variation is consistent with that approved as part of DA/571/2014, although the design of the built form has been refined and reshaped to better relate to the adjacent heritage building and to provide a better public domain outcome through the provision of a through-site link and generous public plaza.

On the basis of the above, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of the proposed variation.

### 5.1 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 to 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 FSR development standard.

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

Object	Comment
(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,	The proposed development will promote the economic and social welfare of the community through the appropriate redevelopment of a currently vacant lot within the wider redevelopment of the WSU campus. The development that is now proposed is consistent in the quantity of floor space which was approved with DA/571/2014.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposed development will facilitate ecologically sustainable development by allowing an appropriate addition to the WSU campus site that will have no negative impact on environmental and social considerations and will support the economic health of the broader Westmead precinct through employment opportunities.
(c) to promote the orderly and economic use and development of land,	In granting consent for DA/571/2014 Council and the Panel determined that the provision of 30,700m <sup>2</sup> of GFA was appropriate for the site and that the impacts of such density could be appropriately managed. This development application seeks consent to deliver the GFA that was approved as part of DA/571/2014 and therefore represents an orderly and economic use of the land.

Object	Comment
(d) to promote the delivery and maintenance of affordable housing,	The proposed development is not relevant to this object.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed development will have no impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Consistent with the development approved as DA/571/2014, the proposed development will allow for an appropriate distribution of floor space within the WSU campus precinct to allow for the proper management of the cultural heritage assets within the site. By focussing the building forms on Lot 2 (the site) and through the proposed distribution of the floor space which allows physical and visual connections to and from the heritage item, the development is able to properly account for the heritage curtilage and significance of the adjacent building.
(g) to promote good design and amenity of the built environment,	The proposal has refined and developed the master plan envelopes proposed by Cox and approved by the panel as part of DA/571/2014, improving the urban outcome and amenity offered by the site. Notwithstanding this refinement, the development now proposed is consistent with the amount of floor space approved.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to the proposed development.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with the requirements of Council's DCP.

## 6.0 **Clause 4.6(4)(A)(li) 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**

### 6.1 **Consistency with the objectives of the development standard**

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in **Section 4.1** of this report.

### 6.2 **Consistency with the B4 – Mixed Use objectives**

#### **Objective A – To provide a mixture of compatible land uses**

The proposed development will contribute to the delivery of a combination of commercial, education, retail, and child care land uses on Lot 2 within the WSU campus redevelopment. This is consistent with the current approval for the site under DA/571/2014, which approved a mixture of compatible land uses, including residential, commercial, education and health land uses, as well as public open space across the WSU campus precinct.

In facilitating 30,700m<sup>2</sup> of GFA on a site on which 30,700m<sup>2</sup> of GFA has been previously approved, the proposed variation will allow for an appropriate mix of compatible land uses and is therefore consistent with this objective.

#### **Objective B – 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**

The site is located approximately 175m from Westmead station, and is immediately adjacent to a route for Stage 1 of the Parramatta Light Rail station and future Sydney Metro West project, as well as various bus routes to the Parramatta and Sydney CBDs. The development will therefore facilitate 30,700m<sup>2</sup> of GFA in a location that is close to existing and future transport infrastructure, and will allow the integration of suitable uses in an accessible location, encouraging public transit patronage. Bicycle parking and end of journey facilities will be provided within the proposed development, which will help to encourage active transportation, including walking and cycling. The proposed variation to the development standard is therefore consistent with this objective.

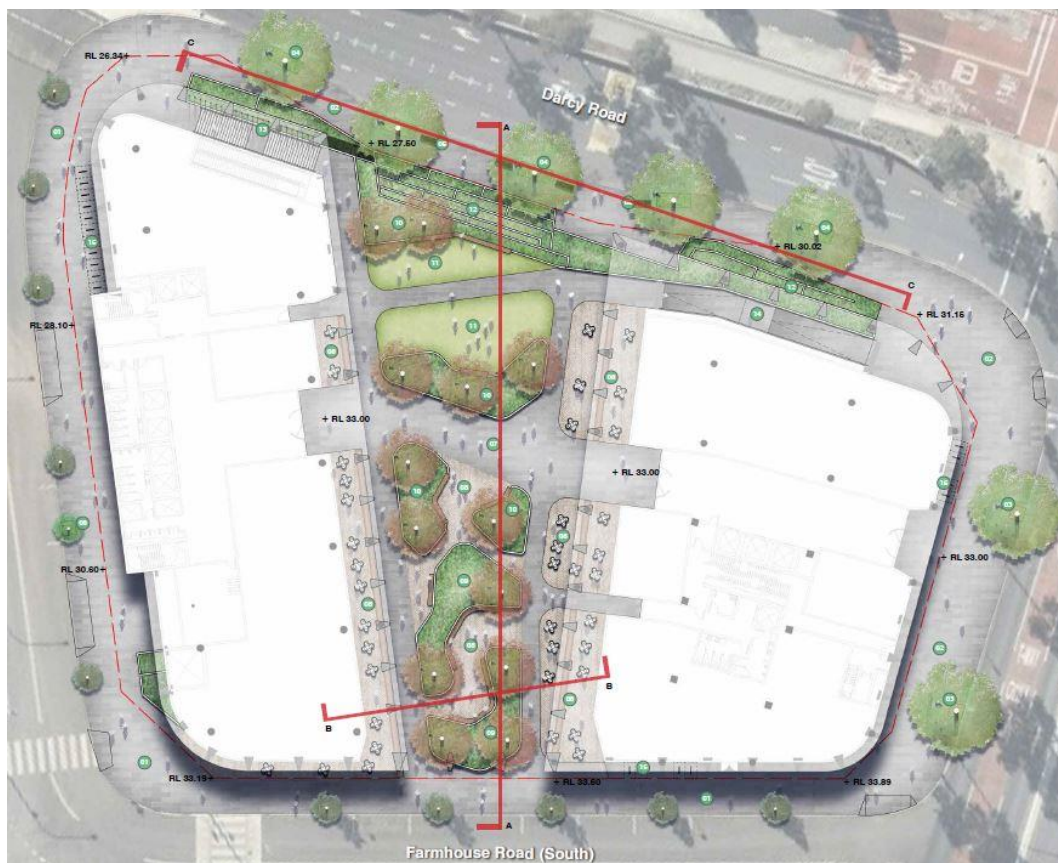
#### **Objective C – To encourage development that contributes to an active, vibrant and sustainable neighbourhood**

The proposed variation will facilitate the delivery of a development that includes activated ground floor interfaces and an active central plaza area. In delivering a new plaza the development will encourage a range of active uses within the publicly accessible open space. The proposed development will have a minimum NABERS requirement of 4 stars, and an aspiration to achieve a five star NABERS rating, thereby assisting in the delivery of an ecologically sustainable precinct.

#### **Objective D – To create opportunities to improve the public domain and pedestrian links**

The proposed variation will facilitate the delivery of a publicly accessible plaza that delivers improved linkages through the precinct and between the precinct open space, the heritage assets within the precinct, and the edge of the precinct. This is illustrated in **Figure 3**.

The proposed plaza realises an opportunity to improve the public domain and deliver a significant pedestrian link within the precinct, by providing a quality open space that includes new trees and areas for members of the public to sit. The proposal for the public domain, which is replicated in **Figure 5** demonstrates the proposal's improvements to the public domain and pedestrian links, and how this improvement will interact with the existing public domain. The proposed variation will assist in delivering this outcome and is therefore consistent with this objective.



**Figure 5: Public domain concept**

Source: Oculus

**Objective E – To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.**

The site is located approximately 1.6km from the nearest B3 Commercial Core zone and therefore the proposed variation will not undermine the function of this higher order zone. The proposed variation is therefore consistent with this objective.

**Objective F – To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.**

The site is located approximately 1.3km from the Parramatta City Centre and therefore the proposed variation will not impact the unique qualities and special character of this area. The proposed variation is therefore consistent with this objective.



## 7.0 Secretary's Concurrence

Under Clause 4.6(5) of PLEP, the Secretary's concurrence is required prior to any variation being granted. Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the proposed development, therefore the Secretary's concurrence can be assumed.

Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the SLEP which must be considered by the Secretary.

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

The variation to the FSR standard will not raise any matter which could be deemed to have State or Regional significance. The variation sought as part of this application is consistent with that which was approved as part of DA/571/2014. The built form is appropriate for the site and consistent with other recent approvals.

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

There is no public benefit in maintaining the development standard. Requiring compliance with the development standard of 3:1 would result in a built form outcome that is inconsistent with the built form approval for the precinct and for the site (DA/571/2014).

The rationale behind the approval under DA/571/2014 involved a redistribution of permissible floor space within the WSU precinct. Such a redistribution would allow the total quantity of floor area that would be permissible under the relevant maximum FSR development standards that apply to the whole precinct to be distributed through the site. This allows for a better appreciation of the site's heritage assets and allows for open space and civil infrastructure (roads).

In approving DA/571/2014, which includes building envelopes that provide a quantity of GFA that is consistent with that now proposed, Council (and the Panel) demonstrated support for the built-form outcome that was proposed at that time, and the public benefits delivered by that outcome.

### **Clause 4.6(5)(c): Any other matters to be taken into consideration by the Secretary**

None.

## 8.0 Conclusion

The site is subject to a maximum FSR development standard of 3:1, which is applied by Clause 4.4 of the PLEP. The site forms part of a larger precinct (WSU Westmead Precinct) approval under DA/571/2014. The proposed development provides a total FSR for Lot 2 that exceeds that permissible FSR for Lot 2. As outlined within this report, compliance with the development standard is both unreasonable and unnecessary because:

- The total GFA proposed is consistent with that approved for the site under DA/571/2014;
- In approving DA/571/2014 Council and the Joint Regional Planning Panel determined that the GFA (and associated FSR) allocated to each lot, including Lot 2, were an appropriate response to the site's constraints;
- In approving DA/571/2014 and subsequently approving DAs for Lots 4 and 5 with substantial variations, the Council and the Joint Regional Planning Panel effectively abandoned the relevant FSR development standard;
- The proposed development is able to satisfy the objectives of the B4 Mixed Use zone; and
- The proposed development is able to satisfy the objectives of Clause 4.4 of the PLEP.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the FSR development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the 'maximum FSR' development standard, the proposed development is considered to satisfy the objectives of the development standard and the B4 Mixed Use zone.

The proposal will provide environmental benefits particularly through the provision of new retail, childcare commercial and tertiary education floor space and a significant public plaza. On this basis, the Clause 4.6 variation is considered well founded and should be supported.