

## Clause 4.6 Variation Request – Floor Space Ratio

### 1.1 Overview

Clause 4.4 of BBLEP 2013 specifies that the floor space ratio of a building may not exceed the maximum FSR specified on the relevant FSR Map. The site is subject to a 1:1 FSR control. The proposed development exceeds the maximum FSR allowance.

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:

*“(2) 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...”*

*“(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.”*

Accordingly, we set out below the justification for the departure to the FSR control applicable under the LEP.

### 1.2 Proposed Variation

Pursuant to Clause 4.4 of the BBLEP 2013 and the accompanying FSR map a maximum FSR of 1:1 applies to the site.

The proposed development involves the construction of two residential apartment buildings comprising a total GFA of 36,879.1sqm. Based on a site area of 9,434 sqm this equates to a FSR of 3.9:1, as such the proposal is inconsistent with Clause 4.4 of the LEP.

The potential to exceed the nominated LEP FSR control for the Pagewood Green site was thoroughly explored in the consideration of the Stage 1 masterplan proposal. As part of that assessment it was accepted that the site is suitable for more intensive development than the LEP controls permit.

The proposed FSR is entirely consistent with the FSR approved under the Stage 1 development consent for UB3. Condition 12 of the Stage 1 Masterplan Consent permits a maximum FSR of 3.92:1 which equates to up to 36,981.28sqm GFA.

#### 1.2.1 Is compliance necessary and reasonable

The proposed FSRs across the Pagewood Green site were developed through an extensive master planning process and have been approved as part of a Stage 1 Development Consent. It would therefore be unnecessary and unreasonable to require strict compliance with the standard at Stage 2.

### 1.2.2 Are there sufficient environmental planning grounds for the variation?

The justification for the breach in the FSR limit is based on the preferred urban design outcome for the Pagewood Green site as considered and approved under the Stage 1 Masterplan Consent. The proposed FSR was approved following consideration of a comprehensive site analysis and review of the site attributes and surrounding context. The southern part of the site, including the subject site, was identified as the least sensitive part of the Pagewood Green site being physically and visually separated from existing low density residential development further north and as such was suitable for more intensive development. Adjoining uses include the Westfield Eastgardens shopping centre to the south while residential properties to the east are considerably separated from the site by the Bunnerong Road carriageway and the other development sites within Pagewood Green. To the west the site is situated opposite the Bonnie Doon Golf Course.

The urban design concept for the Pagewood Green site envisages the even graduation in height south to north across the site, with the tallest buildings and more dense development forms being located in the southern portion of the site reducing down to lower scale buildings to Bunnerong and Heffron Road to the north (including two storey town houses).

### 1.3 Clause 4.3 Objectives

Clause 4.3 sets out the objectives of the maximum FSR development standard. The consistency of the proposed development with these objectives is set out in **Table 14** below.

**TABLE 14: FSR OBJECTIVES**

Objectives	Proposed Development
(a) <i>To establish standards for the maximum development density and intensity of land use.</i>	<p>The Stage 1 masterplan consent establishes a revised maximum development density control for future development applications. The consent was underpinned by density testing and traffic modelling which confirmed that the proposed density can be accommodated without unreasonable impacts.</p> <p>The proposed FSR is entirely consistent with the Stage 1 masterplan consent.</p>
(b) <i>To ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.</i>	<p>The bulk and scale of the proposed development is consistent with the desired future character for the site envisaged under the BBDCP 2013 which establishes the desired future character of the site as a <i>“vibrant mixed use community with a high level of amenity and quality public domain.”</i></p> <p>The additional FSR proposed is a result of the transitional building height approach adopted by the Stage 1 masterplan.</p> <p>The proposed built form will result in a development that is entirely consistent in terms of bulk and scale with the approved masterplan as it relates to UB3.</p>
(c) <i>To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo a substantial transformation.</i>	<p>As part of the wider development of the Bunnerong Road site the proposal will provide an appropriate visual transition between taller buildings proposed to the south and low scale development to the north. The subject site is situated adjacent to the approved UB5W beyond which is the established Westfield Eastgardens shopping centre. The bulk and scale of the proposed UB3 development reflect the character of more intensive development on that site when compared to lower density residential development on Heffron Road.</p>

Objectives	Proposed Development
(d) <i>To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.</i>	The proposed development is distant from low density residential development. It will make a positive contribution to the streetscape through the introduction of building designed to a high architectural standard.
(e) <i>To minimise adverse environmental effects on the use of enjoyment of adjoining properties and the public domain.</i>	The subject site is distant from residential properties. The proposal will not result in adverse impacts on any residential property.
(f) <i>To provide an appropriate correlation between the size of a site and the extent of any development on that site.</i>	The site has been assessed to be suitable for the proposed density and intensity of use proposed through the consideration of the Stage 1 masterplan application. The supporting documentation lodged with that application established that the site, as part of the wider Pagewood Green site is capable of accommodating more intensive development in the form proposed.
(g) <i>To facilitate development that contributes to the economic growth of Botany Bay.</i>	<p>The proposed development will directly contribute to the economic growth of the Pagewood locality and wider Bayside LGA through the investment of \$113 million on the delivery of the project.</p> <p>Temporary jobs will be created through during the construction phase.</p> <p>New residents will contribute to the vitality and viability of local shops and businesses.</p>

As illustrated in the table above, the proposed development does not conflict with the objectives of Clause 4.4 of the LEP.

## 1.4 Summary

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.4 of the LEP. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary as follows:

- Through the Stage 1 masterplan application the Pagewood Green site has been assessed as being suitable for more intensive development than would normally be achievable under the LEP, noting the FSR limits that apply.
- The proposal is entirely consistent with the FSR limits allowable by the approved Stage 1 masterplan for this part of the Pagewood Green site.
- Strict compliance with the height controls would result in a poorer design outcome for the site as it would prevent the delivery of the Pagewood Green site as envisaged by the Stage 1 masterplan consent.
- The bulk and scale of the proposed development is consistent with the adjoining large scale regional retail facility (Westfield Eastgardens) to the south and the other developments approved within the Pagewood Green site, being Urban Blocks 5W, 5E and 4.

- The proposed development is consistent with the intent of Clause 4.4 of the LEP which is to minimise adverse amenity impacts on neighbouring residential properties and to support the desired future character of the area.
- The proposal will not result in the loss of views, nor will it result in adverse amenity impacts and satisfies all relevant amenity criteria of the ADG, including access to sunlight, natural ventilation and privacy.

**Meriton**  
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