

APPENDIX 1

Clause 4.6 Variation from Building Height Standard Site 1

1.0 BUILDING HEIGHT STANDARD

Clause 4.3(2) of *MLEP 2011* provides that the height of buildings on this land is not to exceed the height shown on the *Height of Buildings Map* which, in this case of Site 1, is 26m.

The residential section of the building is to range in height from 14.7m to 24.9m above existing natural ground level.

However, roof top facilities, such as fire services, lifts, stairs and a communal open space area, are to be located above this section of the building.

The lift overruns, stairways to the rooftop, roof tanks for the fire services and mechanical plant areas associated with the building are to partially extend above the 26m building height standard up to a height up to 27.6m.

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

The objectives of Clause 4.6 are:

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

To justify a variation from a standard, Clause 4.6(4) of the *Plan* requires:

- (a) Council to be satisfied that:
 - (i) a written request submitted with application justifies a contravention of the standard by demonstrating that:
 - compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - there are sufficient environmental planning grounds to justify contravening the standard;
 - (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 of the Department of Planning & Environment.

2.0 JUSTIFICATION FOR VARIATION FROM THE STANDARD

The following sections provide the justification for the variation to the building height standard applying to development on this land and the proposed development.

2.1 Unreasonable or Unnecessary Test

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

The residential section of the building is to range in height from 14.7m to 24.9m above existing natural ground level.

However, roof top facilities, such as fire services, lifts, stairs and a communal open space area, are to be located above this section of the building.

The lift overruns, stairways to the rooftop, roof tanks for the fire services and mechanical plant areas associated with the building are to partially extend above the 26m building height standard up to a height up to 27.6m.

The potential for roof top facilities to exceed the building height standard on Site 1 was acknowledged in the amendment to *MDCP 2011* approved by Council on 10 April 2018.

The parts of the building that exceed 26m in height are minor and located in a position where they will not be readily discernible from view from public domain areas and surrounding properties.

The proposed building:

- is consistent with the desired future character of development in this locality; and
- represents an appropriate and satisfactory design response to the opportunities and constraints offered by the site and its setting.

In these circumstances, there is little, if any, utility in applying the height standard to the building proposed on Site 1 and the building height standard is both unreasonable and unnecessary in terms of the proposed development.

2.2 Environmental Planning Grounds

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

The proposed building is consistent with the development concept plans that were revised following the exhibition of the *PP* and the proposed amendment of *MDCP 2011* relating to the site-specific master plan for this significant landholding in the Petersham South Precinct.

The proposed variation from the height standard will not be readily discernible from view from public domain areas or surrounding properties and does not have any adverse environmental effects.

Consequently, there are sufficient environmental grounds to justify the variation from the standard as proposed.

Clause 4.6(4)(a)(i) – Is the consent authority satisfied that the written request has adequately addressed the matters contained in Clause 4.6(3)?

See above.

2.3 Objectives of the Standard

Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the following objectives of the building height standard contained in Clause 4.3(1) of MLEP 2011?

(a) To establish the maximum height of buildings.

The proposed building is consistent with the development concept plans that were revised in consultation with Council following the exhibition of the *PP* and the proposed amendment of *MDCP 2011* relating to the site-specific master plan for this significant landholding in the Petersham South Precinct

The proposal is consistent with this objective.

(b) To ensure building height is consistent with the desired future character of an area.

The proposed building is consistent with the development concept plans that were revised in consultation with Council following the exhibition of the *PP* and the proposed amendment of *MDCP 2011* relating to the site-specific master plan for this significant landholding in the Petersham South Precinct and is, therefore, consistent with the desired future character of an area.

The proposal is consistent with this objective.

(c) To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight.

The parts of the building in excess of 26m in height are minor and located in a position where they will not be readily discernible from view from public domain areas and surrounding properties and will not affect the exposure to the sky and sunlight enjoyed in surrounding buildings or public areas.

The proposal is consistent with this objective.

(d) To nominate heights that will provide an appropriate transition in built form and land use intensity.

The parts of the building in excess of 26m in height are minor and located in a position where they will not have any perceptible effect on the transition in built form or land use intensity in this locality.

The proposal is consistent with this objective.

2.4 Objectives of the Zoning

Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the following objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out?

- (a) To provide for the housing needs of the community within a high density residential environment.**

The proposal will increase housing stock in this area earmarked as a high density residential precinct.

The proposal is consistent with this objective.

- (b) To provide a variety of housing types within a high density residential environment.**

The proposal will increase the variety of housing types in this area earmarked as a high density residential precinct.

The proposal is consistent with this objective.

- (c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.**

The proposal includes the relocation of Petersham RSL Club to Site 3 and the establishment of a café at the corner of Trafalgar and Regent Streets.

The proposal is consistent with this objective.

- (d) To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.**

This objective is not relevant to this proposal.

- (e) To provide for retail premises in existing buildings designed and constructed for commercial purposes.**

This objective is not relevant to this proposal.

- (f) To provide for well connected neighbourhoods that support the use of public transport, walking and cycling.**

The proposal will contribute to a well-connected neighbourhood in this area surrounding the Petersham Railway Station and support the use of public transport, walking and cycling.

The proposal is consistent with this objective.

2.5 Other Matters

Clause 4.6(4)(b) – Concurrence of the Secretary of the Department of Planning & Environment.

The Secretary's concurrence to the variation of the standard may be assumed by Council in accordance with the Department's Planning Circular PS 08-003, issued on 9 May 2008.

Clause 4.6(5)(a) – Does the contravention of the development standard raise any matter of significance for State or regional environmental planning?

The variation from the building height standard for the development does not raise any matter of State or regional environmental planning significance.

Clause 4.6(5)(b) – The public benefit of maintaining the development standard.

There is no identifiable public benefit in maintaining the standard in the context of this proposal and its consistency with the desired future character of development in this locality.

Clause 4.6(5)(c) – Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other relevant matters required to be taken into consideration relating to the Secretary's concurrence.

3.0 CONCLUSION

The building height standard is both unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify variations from the standard for the reasons outlined in Sections 2.1 and 2.2.

The variation from the standard is consistent with the objectives of the standard and the proposed development is consistent with the objectives for development in the R4 High Density Residential zone for the reasons outlined in Sections 2.3 and 2.4.

The development, with the variation from the standard as proposed:

- will not result in any adverse environmental impacts;
- will not have any significant effect on the amenity enjoyed by residents of surrounding properties in terms of privacy, solar access, visual impact or view loss; and
- will promote and co-ordinate the orderly and economic use and development of the land in accordance with the object of Section 1.3(a)(ii) the *EP&A Act*.

The proposal is, therefore, suitable for approval under the terms of Clause 4.6(2) of *MLEP 2011*, despite its variation from the numerical value of the building height standard contained in Clause 4.3(2) of the *Plan*.

APPENDIX 2

Clause 4.6 Variation from Building Height Standard Site 3

1.0 BUILDING HEIGHT STANDARD

Building A

Clause 4.3(2) of *MLEP 2011* provides that the height of buildings on this land adjacent to Fisher Street is not to exceed the height shown on the *Height of Buildings Map* which, in this part of Site 3, is 20m.

The part of Building A, which is located in this area, is to vary between 25.2m and 26m in height.

Building C

Clause 4.3(2) of *MLEP 2011* provides that the height of buildings on this land in the western part of the site is not to exceed the height shown on the *Height of Buildings Map* which, in this part of Site 3, is 29m.

The maximum height of Building C measured at the topmost part of the lift overrun is 33m (RL 65.200).

Clause 4.6

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

The objectives of Clause 4.6 are:

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

To justify a variation from a standard, Clause 4.6(4) of the *Plan* requires:

- (b) Council to be satisfied that:
 - (iii) a written request submitted with application justifies a contravention of the standard by demonstrating that:
 - compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - there are sufficient environmental planning grounds to justify contravening the standard;
 - (iv) 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 of the Department of Planning & Environment.

2.0 JUSTIFICATION FOR VARIATION FROM THE STANDARD

The following sections provide the justification for the variation to the building height standard applying to development on this land and the proposed development.

2.1 Unreasonable or Unnecessary Test

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

Building A

A review of the development concept plans associated with the *PP* with Council's officers on 31 January and 7 February 2018 following its exhibition resulted in an agreement to increase the maximum building height of development in this area to 29m to achieve desirable urban design outcomes.

These outcomes involve:

- the retention of 2 large trees located adjacent to the Fisher Street/Regent Street corner; and
- improvements of the publicly accessible open space area proposed between Buildings A and B.

The part of Building A, which is located in this area, is to vary between 25.2m and 26m in height.

The horizontal and vertical modulation of Building A will achieve a desirable urban design outcome for development on this land.

The proposed Building A:

- Is consistent with the desired future character of development in this locality; and
- represents an appropriate and satisfactory design response to the opportunities and constraints offered by the site and its setting.

In these circumstances, the building height standard is both unreasonable and unnecessary in terms of the proposed development.

Building C

One of the commonly held ways to demonstrate that a development standard is unnecessary is to show that the objectives of the control are achieved notwithstanding the non-compliance with the development standard (*Wehbe v Pittwater Council* [2007] NSWLEC 827).

The objectives of the height of buildings development standard are discussed as follows in the context of the proposal.

(a) to establish the maximum height of buildings

It should be noted that the building mass (i.e. the habitable levels of the building) all sit below the 29m maximum building height and that variation relates to the lift and fire stairs providing access to rooftop communal open space, as well as amenities, a

plant room and a pergola. These building elements are located centrally within the floorplate and do not increase the wall height of the building, which as already noted is below the height control.

(b) to ensure building height is consistent with the desired future character of an area

The desired future character is reflected in the building height and density controls that apply to the site under the LEP. The controls envisage more intense development on the corner of Regent and Trafalgar Street tapering down towards Audley Street in the west. Building C is at a lower height than the building on the corner of Regent and Trafalgar and mediates the difference in height provided in the LEP from east to west. As noted above, the building mass conforms with the building height standard and in this regard is consistent with the desired future character of the area.

The desired future character is also expressed in Section 9.6.2 of the Marrickville Development Control Plan 2011 (DCP) where relevantly it states:

“The desired future character of the area is ... To facilitate urban renewal in appropriate locations (predominantly on masterplan sites), allowing substantial change to the streetscape character while resulting in a high quality public domain ... To allow and encourage a greater scale of development and increased residential density on masterplan sites that provides new dwellings near local shops ...”

At the transition on Fozzard Lane, Figure (6.1m) in the DCP provides a section showing an 8 storey elevation with a lift overrun/plat room towards the centre of the building. The proposal comprises an 8 storey elevation on Fozzard Lane with a lift overrun and plant room in the centre of the building and in this regard is consistent with the desired future character expressed in the DCP.

(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight

As demonstrated in the shadow diagrams submitted with the development application, the shadows from the rooftop elements which exceed the maximum building height fall mostly on the building itself and cause no discernible additional overshadowing.

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity

As discussed in relation to objective (b), the mass of building C conforms with the height control and provides an appropriate transition from east to west as envisaged by the LEP.

As demonstrated by the above, the objectives of the control are achieved notwithstanding the non-compliance with the development standard and, therefore, it is demonstrated that strict compliance with the development standard is unreasonable and unnecessary in this instance.

2.2 Environmental Planning Grounds

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

Building A

The proposed building is consistent with the development concept plans on which the *PP* and the amendment of *MDCP 2011* were based for the site-specific master plan for this significant landholding in the Petersham South Precinct.

The horizontal and vertical modulation of Building A will facilitate a desirable urban design outcome for development on this land.

Consequently, there are sufficient environmental grounds to justify the variation from the standard as proposed.

Building C

The overall height and form of Building C is consistent with the DCP where at Section 9.6.5.1 (Masterplan Area (MA 6.1)) it states:

“C5 The height of proposed buildings on the land shaded in Figure (6.1a) must conform to the control diagram(s) in Figures (6.1b) to (6.1m). The height is expressed in number of storeys.

C6 Small breaches in the MLEP 2011 height (in metres) can be considered to accommodate lift overruns and architectural roof features.”

The relevant control diagram (6.1m) shows a section through Building C illustrating 8 storeys and lift over run/plant room. Even though the lift over run/plant room contributes to the overall height of the building when measured in accordance with the LEP definition of building height, as indicated in C6, small breaches in the LEP height control were contemplated for lift overruns. While the lift overrun in this instance includes lift access to the rooftop communal open space, the variation is considered consistent with the intentions of the DCP.

Because the elements of building C which exceed the building height standard are located centrally within the building footprint (as indicated in the DCP) and are confined to a plant room and facilities required to serve the rooftop communal open space, they cause no environmental harm as demonstrated in the shadow diagrams and the earlier discussion regarding the objectives of the building height control.

Moreover, the provision of rooftop communal open space is consistent with the objects of the *Environmental Planning & Assessment Act* and in particular object (g) ‘to promote good design and amenity of the built environment’.

Consequently, there are sufficient environmental grounds to justify the variation from the standard as proposed.

Clause 4.6(4)(a)(i) – Is the consent authority satisfied that the written request has adequately addressed the matters contained in Clause 4.6(3)?

See above.

2.3 Objectives of the Standard

Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the following objectives of the building height standard contained in Clause 4.3(1) of *MLEP 2011*?

(e) To establish the maximum height of buildings.

The proposed building is consistent with the development concept plans that were revised in consultation with Council following the exhibition of the *PP* and the proposed amendment of *MDCP 2011* relating to the site-specific master plan for this significant landholding in the Petersham South Precinct.

The proposal is consistent with this objective.

(f) To ensure building height is consistent with the desired future character of an area.

The proposed building is consistent with the development concept plans that were revised in consultation with Council following the exhibition of the *PP* and the proposed amendment of *MDCP 2011* relating to the site-specific master plan for this significant landholding in the Petersham South Precinct and is, therefore, consistent with the desired future character of an area.

The proposal is consistent with this objective.

(g) To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight.

The parts of Buildings A and C in excess of the building height standard are relatively minor and will not have any undue or unreasonable effect on the exposure to the sky and sunlight enjoyed in surrounding buildings or public areas.

The proposal is consistent with this objective.

(h) To nominate heights that will provide an appropriate transition in built form and land use intensity.

The part of Building A in excess of 20m in height is relatively minor and will contribute to an appropriate transition in built form and land use intensity in this locality. As noted already, the parts of Building C which exceed the 29m height control are also relatively minor and will not prejudice the creation of an appropriate transition in built form and land use intensity in this locality.

The proposal is consistent with this objective.

2.4 Objectives of the Zoning

Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the following objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out?

- (g) To provide for the housing needs of the community within a high density residential environment.**

The proposal will increase housing stock in this area earmarked as a high density residential precinct.

The proposal is consistent with this objective.

- (h) To provide a variety of housing types within a high density residential environment.**

The proposal will increase the variety of housing types in this area earmarked as a high density residential precinct.

The proposal is consistent with this objective.

- (i) To enable other land uses that provide facilities or services to meet the day to day needs of residents.**

The proposal includes the relocation of Petersham RSL Club to Site 3 and the establishment of a café at the corner of Trafalgar and Regent Streets.

The proposal is consistent with this objective.

- (j) To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.**

This objective is not relevant to this proposal.

- (k) To provide for retail premises in existing buildings designed and constructed for commercial purposes.**

This objective is not relevant to this proposal.

- (l) To provide for well connected neighbourhoods that support the use of public transport, walking and cycling.**

The proposal will contribute to a well-connected neighbourhood in this area surrounding the Petersham Railway Station and support the use of public transport, walking and cycling.

The proposal is consistent with this objective.

2.5 Other Matters

Clause 4.6(4)(b) – Concurrence of the Secretary of the Department of Planning & Environment.

The Secretary's concurrence to the variation of the standard may be assumed by Council in accordance with the Department's Planning Circular PS 08-003, issued on 9 May 2008.

Clause 4.6(5)(a) – Does the contravention of the development standard raise any matter of significance for State or regional environmental planning?

The variation from the building height standard for the development does not raise any matter of State or regional environmental planning significance.

Clause 4.6(5)(b) –The public benefit of maintaining the development standard.

There is no identifiable public benefit in maintaining the standard in the context of this proposal and its consistency with the desired future character of development in this locality.

Clause 4.6(5)(c) – Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other relevant matters required to be taken into consideration relating to the Secretary's concurrence.

3.0 CONCLUSION

The building height standard is both unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify variations from the standard for the reasons outlined in Sections 2.1 and 2.2.

The variation from the standard is consistent with the objectives of the standard and the proposed development is consistent with the objectives for development in the R4 High Density Residential zone for the reasons outlined in Sections 2.3 and 2.4.

The development, with the variation from the standard as proposed:

- will not result in any adverse environmental impacts;
- will not have any significant effect on the amenity enjoyed by residents of surrounding properties in terms of privacy, solar access, visual impact or view loss; and
- will promote and co-ordinate the orderly and economic use and development of the land in accordance with the object of Section 1.3(a)(ii) the *EP&A Act*.

The proposal is, therefore, suitable for approval under the terms of Clause 4.6(2) of *MLEP 2011*, despite its variation from the numerical value of the building height standard contained in Clause 4.3(2) of the *Plan*.

1.0 FLOOR SPACE RATIO STANDARDS

A summary of the floor space ratio (*FSR*) standards applying to the development under the terms of *Marrickville Local Environmental Plan 2011 (MLEP 2011)* and the permissible “gross floor area” (*GFA*) is contained in Table 1.

Table 1

	Site 1	Site 2	Site 3	Overall
Site Area	3,028m ²	1,960m ²	5,424m ²	10,412m ²
FSR Standard	2.8:1	2.1:1	3.4:1	3:1
Permissible GFA	8,478.4m ²	4,116m ²	18,441.6m ²	31,036m ²

These site-specific standards were adopted as a result of *MLEP 2011 (Amendment No.15)* which was made on 27 July 2018.

The standards reflect detailed development concept plans that were reviewed by Council’s *Architectural Excellence Panel (AEP)* and staff in February 2018 following the public exhibition of the planning proposal considered by Council at its meeting on 10 April 2018 and which led to:

- the making of *Amendment No.15* and the adoption of the *FSR* standards; and
- the subsequent amendment of the site-specific planning controls for Masterplan Area MP 6.1 in Part 9.6.5.1 of *Marrickville Development Control Plan 2011 (MDCP 2011)* relating to the redevelopment of the land.

The height, bulk and scale of the buildings described in the concept plans have provided the basis for the urban design and streetscape context for the development of this master plan site and the desired future character of development in this locality.

The plans submitted with the development application are consistent with in the concept plans and the proposed *FSR*’s and *GFA*’s are shown in Table 2.

Table 2

	Site 1	Site 2	Site 3	Overall
FSR	2.79:1	2.06:1	3.35:1	2.94:1
GFA	8,442m ²	4,042m ²	18,163m ²	30,647m ²

Council has raised issues concerning:

- the exclusion of some of the corridors shown on the plans from *GFA*; and
- the need to include the area of car spaces in excess of Council’s maximum parking controls contained in *MDCP 2011* as *GFA*.

Corridors

There have been a number of judgements in the Land and Environment Court of NSW on the issue of corridors and whether or not they represent *GFA*, including *GGD Danks Street P/L and CR Danks Street P/L v. Council of the City of Sydney*; *Landmark Group Australia Pty Ltd v. Sutherland Shire Council* and *Ceeroose Pty Ltd v. Inner West Council*.

ATTACHMENT 1 - Variations from Floor Space Ratio Standards

A review of these judgements indicates that relevant determinants of whether a corridor represents an external wall of a building relate to:

- determining what elements of a building represent its external wall to enable a calculation to be made of the floor area measured to its internal surface;
- the extent of wall openings to determine their proportional significance as representing an external wall; and
- whether corridors can get wet during inclement weather.

On a precautionary basis, the corridors that are considered by Council to represent *GFA* have been included in *FSR* calculations and result in the *FSR*'s and *GFA*'s shown in Table 3.

Table 3

	Site 1	Site 2	Site 3	Overall
FSR	2.81:1	2.20:1	3.41:1	3.01:1
GFA	8,502m ²	4,311m ²	18,492m ²	31,305m ²

In terms of the development's height, bulk and scale, the proposal is consistent with:

- the detailed development concept plans upon which the *FSR* standards adopted by *Amendment No.15* were based;
- the desired urban design and streetscape context for the development of this land; and
- the desired future character of development in this locality.

In this context, the variations from the *FSR* standards using Council's approach of including corridors as *GFA* are minor and inconsequential.

Residential Car Parking

The definition of *GFA* in *MLEP 2011* excludes "car parking to meet the requirements of the consent authority (including access to that car parking)".

NSW Roads & Maritime Services (RMS) Guide to Traffic Generating Development and most development control plans are based on providing a minimum number of off-street car parking spaces in respect to various land uses.

However, *MDCP 2011* is based on specifying the maximum number of spaces that can be provided in order to encourage the use of walking, cycling and public transport as the primary modes of private transport.

A comparison of the maximum residential parking requirements specified in *MDCP 2011*, the minimum requirements in the *RMS Guide* and the parking proposed to be provided in this application is contained in Table 4.

Table 4

Site	MDCP 2011 Maximum	RMS Guide Minimum	Proposal	Spaces in Excess of MDCP 2011 Control
1	69 spaces	104 spaces	91 spaces	22 spaces
2	50 spaces	50 spaces	50 spaces *	----
3	140 spaces	190 spaces	169 spaces	29 Spaces
Total:	259 spaces	344 spaces	310 spaces	51 spaces

* Number of spaces increased from 45 to 50 spaces as required by Council (Item 104)

ATTACHMENT 1 - Variations from Floor Space Ratio Standards

The parking to be provided exceeds the maximum number of car spaces specified in Control C1 in Part 2.10.5 of *MDCP 2011* and, as such, Council has determined that the excess parking represents *GFA* in relation to Sites 1 and 3 because of the inclusion of:

- the 22 residential car spaces on Site 1; and
- the 29 residential car spaces on Site 3.

A summary of the effects of the *GFA* associated with residential car spaces in excess of maximum specified in *MDCP 2011* on *GFA* and *FSR* standards is contained in Table 5.

Table 5

	Site 1	Site 2	Site 3	Overall
FSR	2.92:1	2.20:1	3.48:1	3.08:1
GFA	8,856m ²	4,311m ²	18,889m ²	32,056m ²

These figures include the *GFA* of the corridors in Table 3.

Public Car Parking

24 car spaces are to be provided on Site 1 for general public use, the ownership of which is to be transferred to Council.

These spaces are to be provided to satisfy a need identified by Council and at Council's request.

These spaces have a *GFA* of 360m².

Table 6 indicates the total *GFA* and *FSR* determined in accordance with Council's interpretation of *GFA*, i.e. including:

- corridors;
- residential car spaces in excess of Council's standards; and
- the 24 public car parking spaces to be transferred to Council.

Table 6

	Site 1	Site 2	Site 3	Overall
FSR	3.04:1	2.20:1	3.48:1	3.11:1
GFA	9,216m ²	4,311m ²	18,889m ²	32,416m ²

Car Parking Location

All of the car spaces associated with the development are located in basement levels under the buildings and will not be visible from public domain areas in New Canterbury Road, Trafalgar, Regent and Fisher Streets or Fozzard Lane or from adjoining properties.

2.0 VARIATIONS FROM DEVELOPMENT STANDARDS

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

The objectives of Clause 4.6 are:

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

To justify a variation from a standard, Clause 4.6(4) of the *Plan* requires:

- (a) Council to be satisfied that:
 - (i) this written request has adequately addressed the matters specified in Clause 4.6(3) seeking to justify the contravention of the standard by demonstrating that:
 - compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - there are sufficient environmental planning grounds to justify contravening the standard;
 - (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 of the Department of Planning & Environment.

The following sections provide the justification for the variations from the *FSR* standards applying to development on this land and the proposed development.

2.1 Unreasonable or Unnecessary Test

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

The objectives of the *FSR* standards expressed in Clause 4.4(1) of *MLEP 2011* relate to:

- controlling building density and bulk in relation to the site area in order to achieve the desired future character of an area; and
- minimising adverse environmental impacts on adjoining properties and the public domain.

The proposed development is consistent with the detailed development concept plans that were subject to a comprehensive review by Council's officers and its *Architectural Excellence Panel* in February 2018 following the exhibition the planning proposal which:

- led to the making of:
 - *Amendment No. 15* on 27 July 2018 and the adoption of the *FSR* standards; and
 - the site-specific master plan for this significant landholding in the Petersham South Precinct incorporated into Part 9.6 of *MDCP 2011* following the making of *Amendment No. 15*; and
- defined the desired urban design and streetscape context for the development of the land and the desired future character of development in this locality.

ATTACHMENT 1 - Variations from Floor Space Ratio Standards

The base buildings proposed on Sites 1, 2 and 3 have a *FSR* and a *GFA*, as outlined in **Table 2**, and comply with the standards contained in *MLEP 2011*.

The inclusion of the corridors as *GFA*, using Council's approach to determine *GFA*, results in:

- Site 1, exceeding the *FSR* standard by some 23.6m² (or by 0.28%);
- Site 2, exceeding the standard by 195m² (or by 4.74%); and
- Site 3, exceeding the standard by 50.4m² (or by 0.28%).

The corridors that have been included in *GFA* are located in areas of the buildings that are not readily discernible from the public domain or surrounding properties.

In terms of the overall development proposed in the application, which has a total *GFA* in excess of 31,000m², variations to the extent proposed are statistically insignificant.

The extent to which the corridors exceed the *FSR* standards are minor and inconsequential and will not have any effects in terms of the perceived bulk and scale of the development on each of the sites and, importantly, on the development of the 3 sites as a whole.

The underlying objectives of the parking controls contained in *MDCP 2011* are:

- to balance the need to meet car parking demand on-site to avoid excessive spill over onto streets, with the need to constrain parking to maintain the LGA's compact urban form and promote sustainable transport;
- to improve the integration of land use and transport by applying strict constraints to car parking in accessible areas; and
- to promote sustainable transport by reducing car usage and increasing public transport use, walking and cycling.

These objectives are different to and inconsistent with the objectives of *FSR* standards expressed in Clause 4.4(1) of *MLEP 2011*.

The maximum parking controls specified in *MDCP 2011*:

- are arbitrary in their nature, as exemplified by a greater number of spaces being permitted on Site 2 to the number permitted on Sites 1 and 3;
- are a non-statutory control; and
- are inconsistent with the *RMS Guide*, which provides a minimum requirement for the residential component of the development which is greater than the maximum requirement contained in *MDCP 2011*.

The extent of parking proposed is appropriate in terms of:

- the minimum parking standards contained in the *RMS Guide* for residential development;
- the *RMS*'s stated desire to eliminate kerbside parking along Site 3's 100m frontage to Trafalgar Street;
- current market demands for residential development; and
- minimising demand for on-street parking in this locality.

The proposal provides a satisfactory and appropriate balance between providing sufficient on-site parking, the potential adverse effects of on-street parking and the need to constrain parking to foster and promote the use of public transport.

ATTACHMENT 1 - Variations from Floor Space Ratio Standards

Section 3.42(1) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* provides that the principal purpose of a development control plan is to provide guidance on the following matters:

- to give effect to the aims of any environmental planning instrument that applies to the development;
- to facilitate development that is permissible under any such instrument; and
- to achieve the objectives of land zones under any such instrument, and

provides that provisions of a development control plan made for these purposes are not statutory requirements.

The car spaces in excess of the maximum *MDCP 2011* control are located in basement levels under the buildings and will not be visible from public domain areas in New Canterbury Road, Trafalgar, Regent and Fisher Streets or Fozzard Lane and, consequently, will not affect the proposal's consistency with:

- the desired urban design and streetscape context for the development of this land; or
- the desired future character of development in this locality,

and will not have any environmental impact on adjoining properties or the public domain.

The public car spaces on Site 1 are not required to satisfy a need generated by the proposed development.

They are a result of Council's desire to provide such parking and the applicant's willingness to accommodate Council's request to provide it.

Conclusion

In the context of this application, the variations from the *FSR* standards:

- are minor and inconsequential;
- will facilitate development that is consistent with the desired urban design and streetscape context for the development of the land and the desired future character of development in this locality; and
- will not have any effect on the amenity of this area in terms of:
 - the perceived bulk and scale of the development; or
 - privacy, overshadowing, view loss or visual impact of surrounding properties.

As such, the *FSR* standards are considered to be both unreasonable and unnecessary in relation to this proposal.

2.2 Environmental Planning Grounds

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

The application proposes the redevelopment of land which has an area of 10,412m², representing over 75% of the land zoned R4 High Density Residential in the immediate environs of the Petersham Railway Station, in an integrated and wholistic redevelopment plan.

The proposed development is consistent with the detailed development concept plans that were subject to a comprehensive review by Council's officers and its *Architectural Excellence Panel* in February 2018 following the exhibition the planning proposal which:

- led to the making of:
 - *Amendment No.15* on 27 July 2018 and the adoption of the *FSR* standards; and
 - the site-specific master plan for this significant landholding in the Petersham South Precinct incorporated into Part 9.6 of *MDCP 2011* following the making of *Amendment No.15*; and
- defined the desired urban design and streetscape context for the development of the land and the desired future character of development in this locality.

The proposal also provides a satisfactory and appropriate balance between the provision of off-street parking associated with the residential components of the development and the potential adverse effects of on-street parking on the surrounding road network, should insufficient parking be provided.

All of the car parking associated with the development is located in basement areas of the proposed buildings and:

- will not be visible when viewed from the public domain or adjoining properties; and
- will have a positive effect on the amenity of the area by reducing demand for on-street parking should an appropriate level of off-street parking not be provided.

The variations from the *FSR* standards will not have any adverse environmental impacts on adjoining properties or the public domain.

The proposal is consistent with the object of Section 1.3(c) of *EP&A Act* of promoting the orderly and economic use and development of land.

Consequently, there are sufficient environmental grounds to justify the variation from the standard as proposed.

Clause 4.6(4)(a)(i) – Is the consent authority satisfied that the written request has adequately addressed the matters contained in Clause 4.6(3)?

See above.

2.3 Objectives of the Standard

Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the following objectives of the *FSR* standards contained in Clause 4.4(1) of *MLEP 2011*?

(a) To establish the maximum floor space ratio.

The proposed development is consistent with the detailed development concept plans that were subject to a comprehensive review by Council's officers and its *Architectural Excellence Panel* in February 2018 following the exhibition the planning proposal which:

- led to the making of:
 - *Amendment No.15* on 27 July 2018 and the adoption of the *FSR* standards; and
 - the site-specific master plan for this significant landholding in the Petersham South Precinct incorporated into Part 9.6 of *MDCP 2011* following the making of *Amendment No.15*; and
- defined the desired urban design and streetscape context for the development of the land and the desired future character of development in this locality.

The proposal represents minor and inconsequential variations from the numerical *FSR* standards.

The proposal is consistent with this objective.

(b) To control building density and bulk in relation to the site area in order to achieve the desired future character for different areas.

The proposed development is consistent with the detailed development concept plans that were subject to a comprehensive review by Council's officers and its *Architectural Excellence Panel* in February 2018 following the exhibition the planning proposal which:

- led to the making of:
 - *Amendment No.15* on 27 July 2018 and the adoption of the *FSR* standards; and
 - the site-specific master plan for this significant landholding in the Petersham South Precinct incorporated into Part 9.6 of *MDCP 2011* following the making of *Amendment No.15*; and
- defined the desired urban design and streetscape context for the development of the land and the desired future character of development in this locality.

The *GFA* associated with the corridors and the car spaces in excess of Council's controls, which are located in basement areas of the buildings, will not be visible from the public domain or adjoining properties and will be imperceptible in terms of building density and bulk

The proposal will result in a building density and bulk which relates appropriately to the site area and is consistent with the desired future character of development in this locality.

The proposal is consistent with this objective.

(c) To minimise adverse environmental impacts on adjoining properties and the public domain.

The proposed development is consistent with the detailed development concept plans that were subject to a comprehensive review by Council's officers and its *Architectural Excellence Panel* in February 2018 following the exhibition the planning proposal which:

- led to the making of:
 - *Amendment No.15* on 27 July 2018 and the adoption of the *FSR* standards; and
 - the site-specific master plan for this significant landholding in the Petersham South Precinct incorporated into Part 9.6 of *MDCP 2011* following the making of *Amendment No.15*; and
- defined the desired urban design and streetscape context for the development of the land and the desired future character of development in this locality.

The corridors in the buildings and the car spaces in excess of Council's controls, which are located in basement areas of the buildings, will not be visible from the public domain or adjoining properties and will not have any adverse environmental impact on adjoining properties or the public domain.

The proposal is consistent with this objective.

2.4 Objectives of the Zoning

Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the following objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out?

(a) To provide for the housing needs of the community within a high density residential environment.

The development is to provide for the housing needs of the community within a high density residential environment.

The proposal is consistent with this objective.

(b) To provide a variety of housing types within a high density residential environment.

The development is to provide a variety of housing types.

The proposal is consistent with this objective.

(c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is to facilitate the relocation of the Petersham RSL Club to the western side of Regent Street to provide vital recreation and leisure facilities for the local community in a new modern facility and a café.

The proposal is consistent with this objective.

- (d) **To provide for office premises but only as part of the conversion of existing industrial and warehouse buildings or in existing buildings designed and constructed for commercial purposes.**

This objective is not relevant to this proposal.

- (e) **To provide for retail premises in existing buildings designed and constructed for commercial purposes.**

This objective is not relevant to this proposal.

- (f) **To provide for well connected neighbourhoods that support the use of public transport, walking and cycling.**

The proposal incorporates:

- the widening of Fozzard Lane;
- the creation of a publicly accessible open space area between buildings on Site 3 designed to facilitate public pedestrian access connecting Trafalgar Street, Fozzard Lane and Regent Street; and
- the potential to provide future extensions of the pedestrian network in this area and improved connections between the Petersham Railway Station and Shopping Centre.

The proposal is consistent with this objective.

2.5 Other Matters

Clause 4.6(4)(b) – Concurrence of the Secretary of the Department of Planning & Environment.

The Secretary's concurrence to the variation of the standards may be assumed by Council in accordance with the Department's Planning Circular PS 08-003, issued on 9 May 2008.

Clause 4.6(5)(a) – Does the contravention of the development standard raise any matter of significance for State or regional environmental planning?

The variations from the *FSR* standards do not raise any matter of State or regional environmental planning significance.

Clause 4.6(5)(b) – The public benefit of maintaining the development standard.

There is no identifiable public benefit in maintaining the standards in the context of the existing and desired future character of development in this locality, particularly when regard is given to the manner in which the *FSR* standard was adopted.

Clause 4.6(5)(c) – Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other relevant matters required to be taken into consideration relating to the Secretary's concurrence.

3.0 CONCLUSION

The *FSR* standards are both unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify variations from the standards for the reasons outlined in Sections 2.1 and 2.2.

The variations from the standards are consistent with the objectives of the standard, expressed in Clause 4.4(1) of *MLEP 2011*, and the proposed development is consistent with the objectives for development in the R4 High Density Residential zone for the reasons outlined in Sections 2.3 and 2.4.

The development, with the variation from the standards as proposed:

- will not result in any adverse environmental impacts;
- will not have any effect on the amenity enjoyed by residents of surrounding properties in terms of privacy, solar access, visual impact or view loss; and
- will promote the orderly and economic use and development of the land in accordance with the object of Section 1.3(c) of *EP&A Act*.

The proposal is, therefore, suitable for approval under the terms of Clause 4.6(2) of *MLEP 2011*, despite its variation from the numerical value of the *FSR* standards contained in the *Plan*.