

# **CLAUSE 4.6 VARIATION: FLOOR SPACE RATIO** **190 CROATIA AVENUE, EDMONDSON PARK**

## **1. INTRODUCTION**

This written request has been prepared in accordance with the provisions of clause 4.6 “Exceptions to Development Standards”. The request seeks a variation to the Floor Space Ratio (FSR) development standard adopted under clause 4.4 of Liverpool Local Environmental Plan 2008 (LLEP 2008) and relates to Development Application, DA-265/2018 for land at No. 190 Croatia Avenue, Edmondson Park, legally described as Lot 32 in DP 1228502 (the site).

The site is a large parcel of land (approximately 2 ha) within the Edmondson Park urban release area and has been earmarked for future residential development to accommodate Sydney’s growing population.

The proposed development involves subdivision to create four Torrens Title lots (**Figure 1**) combined with construction of three residential flat buildings containing 135 dwellings and basement car parking, combined with the construction of new internal roads, drainage and temporary flood mitigation works. A summary of the key elements of the proposal is provided in **Table 1**.

Figure 1 – Proposed Layout Plan

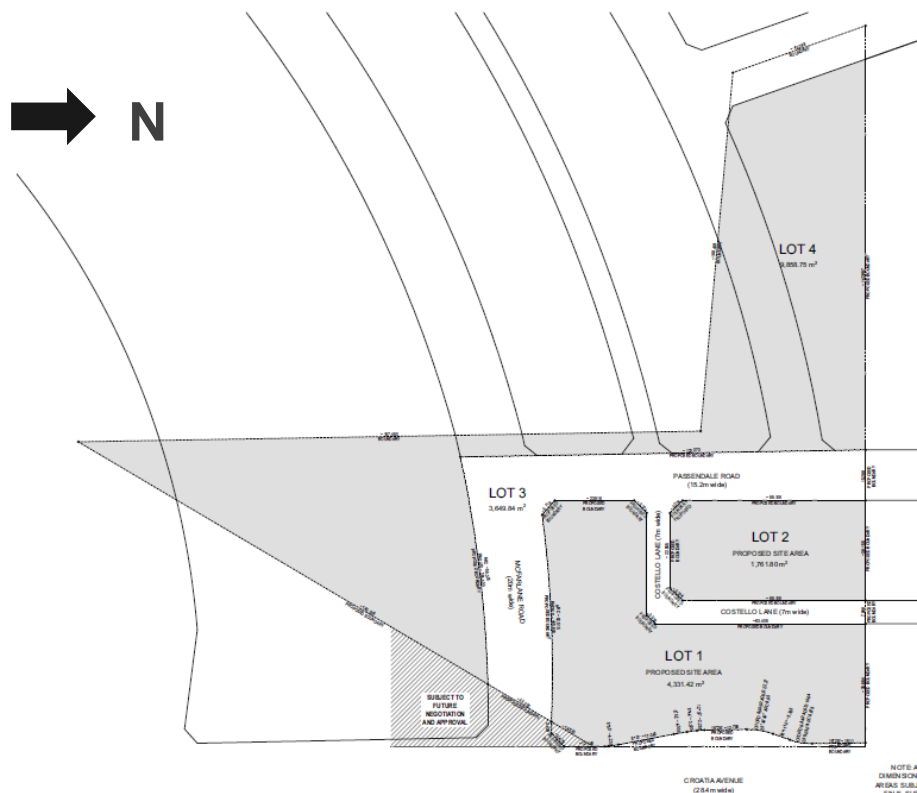
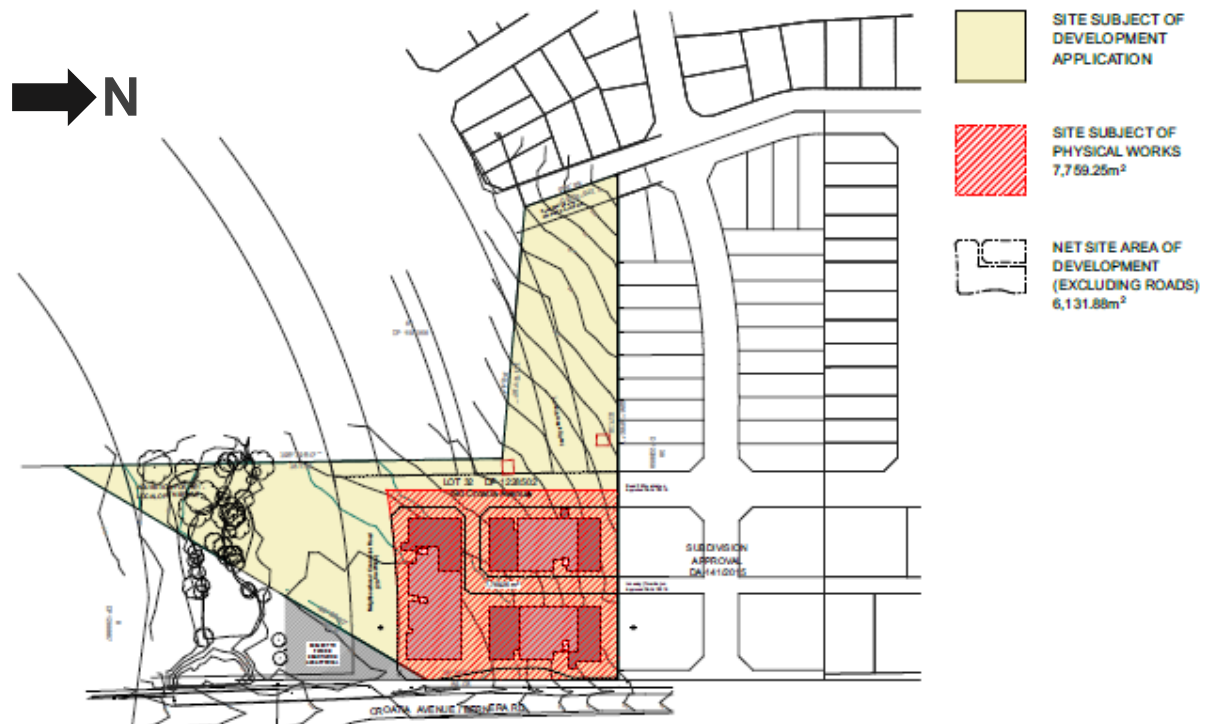


Table 1 – Development Summary

Lot	Land Area (m <sup>2</sup> )	Development Area (m <sup>2</sup> )	Proposed Use	Zoning
One	4,331.42	4,331.42	Residential Flat Building – Buildings A and B	R1 General Residential
Two	1,761.80	1,761.80	Residential Flat Building – Building C	R1 General Residential
Three	3,649.84	1,666.03	Roads	R1 General Residential
Four	9,858.75	Nil	Residue Lot – future development.  Minor drainage and temporary flood mitigation works.	Part R1 General Residential; RE1 Public Recreation and SP2 Infrastructure
<b>Totals</b>	<b>19,602</b>	<b>7,759.25</b>	N/A	N/A

Despite the size of the Site, development works are focused in the north-east corner, shown hatched and red in **Figure 2**. This portion of the Site is equal to 7,759.25sq. and has formed the basis of calculating FSR.

Figure 2 – Identification of the “Development Area”



Source: MPA

## 2. PROPOSED VARIATION TO DEVELOPMENT STANDARD

As shown in **Figure 3**, the relevant FSR Map of LLEP 2008 nominates a maximum FSR of 1:5.1 for the portion of the site to be developed (refer **Figure 3**). As set out in Table 1, the overall area of the north-east portion of the site is 7,759.25sqm. Based on an FSR of 1.5, the potential Gross Floor Area is 11,638.875 sqm.

The following definitions have been applied in the calculation of GFA and FSR:

The LLEP 2008 defines FSR as:

*“the ratio of the gross floor area of all buildings within the site to the site area.”*

The LLEP 2008 defines gross floor area (GFA) as:

*“the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

*but excludes:*

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
  - (i) storage, and
  - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.”

Figure 3 – Floor Space Ratio Map



Source: LLEP 2008 and Urbis

For greenfield development areas, where strategic planning policies nominate future roads to be constructed and dedicated to Council, it is common practice to include the area of roads for the purposes of calculating site area and determining compliance with FSR. Accordingly, the total FSR of the proposed development has been calculated on the basis of the site area pre-subdivision and the available FSR from within the proposed roads has been allocated to the built form within the development lots (lots one and two).

Notwithstanding the above, it is acknowledged that if Lot 1 and Lot 2 were considered individually, then the FSR for these land parcels would not comply with the maximum FSR of 1.5:1. Whilst Urbis maintains the view that FSR should be based on the site area pre-subdivision, to provide certainty to Council, this Clause 4.6 “Exceptions to Development Standards” request has been prepared on behalf of Croatia 88 Pty Ltd (the Applicant).

**Table 2** provides a summary of the development particulars relevant to the calculation of FSR combined with the calculated variations.

Table 2 – Proposed FSR and Variations

Lot	LEP Control	Site Area (sqm.)	Max GFA (sqm.)	Proposed GFA (sqm.)	Proposed FSR	Proposed Variance
1	1.5:1	4,331.42	6,497.13	Building A: 3,229 Building B: 4,874 Total: 8,103	1.9:1	1,605.87sqm (24.71%)
2	1.5:1	1,761.80	2,642.70	Building C: 3,391	1.92:1	748.30sqm (28.31%)
Prt 3	1.5:1	1,666.03	2,499.45	Nil	Nil	Nil
Cumulative	1.5:1	<b>7,759.25</b>	<b>11,639.48</b>	<b>11,494</b>	1.48:1	N/A

### 3. NSW LAND AND ENVIRONMENT COURT CASE LAW (TESTS)

Planning principles and judgements issued by the Land and Environment Court (NSW LEC) provide guidance in relation to requests to vary a development standard. The case law that has been considered in the preparation of this clause 4.6 “Exception to Development Standards” request are as follows:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
- *Four2Five Pty Ltd v. Ashfield Council* [2015] NSWCA 248 (‘Four2five No 3’).

## 4. ASSESSMENT OF CLAUSE 4.6 VARIATION

### 4.1. CONSISTENCY WITH OBJECTIVES OF FSR CONTROL

A key element of considering a request to vary a development standard under clause 4.6 is consideration of the underlying objectives of the development standard.

The general underlying intent of the FSR control, is to ensure that development is of an appropriate density and intensity for the site and the general locality consistent with desired future character and capable of being supported by suitable infrastructure

**Table 3** provides considers the proposal against the relevant objectives of clause 4.4 of LLEP 2008.

Table 3 – Assessment of Consistency with Development Standard Objectives

Objective	Assessment
<i>To establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic.</i>	<p>The site is located within 800m of the Edmondson Park railway station and the future Edmondson Park Town Centre, which will contain a variety of employment and retail opportunities. As noted on Council's Possible Public Transport Route Plan included in Part 2.11 of the Liverpool Development Control Plan 2008 (LDCP 2008), Croatia Avenue will become the 'Main Bus Route' through the area.</p> <p>A public utility infrastructure report was submitted as <b>Appendix S</b> of the SEE. This report indicates that all major services (sewer, water, stormwater, electrical, gas and telecommunications) are available within the vicinity of the site. Upgrade works to relevant services will be undertaken as "lead in works" that are typical of greenfield subdivision sites within urban release areas.</p> <p>As outlined within the Traffic and Parking Assessment that accompanied the DA, proposed traffic generated by the proposal is projected to be minimal.</p> <p>Local infrastructure and public transport is therefore readily available within the surrounding area to support the proposed density within the site.</p>
<i>To control building density and bulk in relation to the site area in order to achieve the desired future character for different locations.</i>	<p>In accordance with the Edmondson Park 'Urban' Future Character Statement within the LDCP 2008, "taller buildings are encouraged to frame Croatia Avenue and the Maxwells Creek Urban Park. Buildings are predominantly between 3 – 6 storeys and massed towards the public realm".</p>

Objective	Assessment
<p><i>To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.</i></p>	<p>The proposed development is a maximum of six storeys and has been specifically designed to be of a height and scale that reflects this desired character.</p> <p>Given that the proposal is located on a greenfield site within a primarily rural environment, the site is not immediately surrounded by neighbouring properties. However, it is noted that there are existing approvals for residential development on neighbouring properties.</p> <p>Nonetheless, as outlined in Section 7.2 of the SEE, the proposal will not prejudice the development of adjoining properties or unreasonably impact on the amenity of future residents given:</p> <ul style="list-style-type: none"> <li>• The subject site is in the beneficial position of being surrounded by existing and proposed roadways on three sides and an approved residential subdivision to the immediate north (DA-141/2015).</li> <li>• Buildings A and C incorporates appropriate separation to comply with the building design criteria of the ADG (refer to section 3.2.2 of the covering statement).</li> <li>• The separation provided by the roadways and setback to the northern boundary will avoid unreasonable overlooking from the development into future dwellings surrounding the site.</li> <li>• Shadow diagrams prepared by MPA accompanied the DA and assessed shadowing impacts generated by the proposal. These diagrams indicate that on 21 June, shadows will largely be contained within the subject site or fall across Croatia Avenue and the proposed roadways. Importantly, the proposal will not overshadow the approved residential development to the north. Moreover, shadow over the residue lot (lot 4) is limited in extent enabling 3 hours of solar access and would not affect future development or amenity. The public domain is relatively unaffected.</li> <li>• It is considered that the proposal has been designed with consideration of the visual impact of the development on the</li> </ul>

Objective	Assessment
	locality as well as to offer scenic outlook opportunities for residents. The proposal incorporates high quality and articulated facades that will contribute to the architectural diversity expected in this transitional area and will deliver a streetscape with visual interest.
<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>	This proposal is located within an environment that is currently undergoing significant development to facilitate higher density development in accordance with the future desired built form character of Edmondson Park. The proposal has been designed to reflect this desired built form character while also providing an appropriate transition from the town centre to the lower scale dwellings that already exist to the north-west of the site.
<i>To provide an appropriate correlation between the size of a site and the extent of any development on that site.</i>	The proposal is of an appropriate scale in relation to the size of the site. In particular, the site area with the proposed roads included, compiles with the maximum FSR standard. Furthermore, the predominant building height complies with the height of buildings development standard (with the exception of the lift overruns and a small portion of Building C's parapet).
<i>To facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.</i>	N/A. The site is not located within the Liverpool city centre.

Overall, the proposal is considered to be consistent with each of the relevant objectives of clause 4.4 of LLEP 2008.

## 4.2. CONSISTENCY WITH OBJECTIVES OF R1 GENERAL RESIDENTIAL ZONE

The majority of the site is zoned R1 General Residential, with small portions of the site also zoned RE1 Public Recreation, SP2 Infrastructure and B4 Mixed Use. The proposed residential flat buildings are located wholly within that portion of the site zoned R1 General Residential.

The proposal is considered to be consistent with the land use objectives for R1 General Residential zoned land as listed within the LLEP 2008. This has been outlined in detail within **Table 4**.



Table 4 – Consideration of Zone Objectives

Objective	Assessment
<i>To provide for the housing needs of the community.</i>	The proposal will provide a mix of one, two and three bedroom apartments consistent with the LDCP 2008 for Edmondson Park and this will in part meet the demand for housing in this urban release area.
<i>To provide for a variety of housing types and densities.</i>	The proposal will contribute to the delivery of broader housing types including a variety of apartment types to cater for a range of lifestyles and household sizes.
<i>To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.</i>	The site is within 800 metres walking distance to Edmondson Park railway station and will be supported by future employment generating land uses to be delivered in the Edmondson Park Town Centre. Accordingly, the site is highly suitable for supporting the proposed development density.

Overall, the proposal is considered to be consistent with each of the land use objectives for R1 zoned land as prescribed by the LLEP 2008.

### 4.3. UNREASONABLE OR UNNECESSARY

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- The common practice for greenfield development, where strategic planning nominates future roads to be constructed and dedicated to Council, is to include for the purposes of calculating site area and FSR, the area of the proposed roads. Costello Lane and part of Passendale Road are proposed to be developed (and dedicated to Council) as part of the DA and are entirely consistent with the Edmondson Park Indicative Layout Plan included in the LDCP 2008. Accordingly, the specific areas of the site in which these roads are to be developed are considered to be part of the total site area that is used to calculate proposed FSR:

- FSR is defined as *“the ratio of the gross floor area of all buildings within the site to the site area”*; and
- Site area is defined as *“the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan.”*

Only those portions of the Site on which the development is permissible have been included in the calculation of the “site area” for the purpose of establishing a suitable GFA and FSR;

- Calculation of site area has been guided by the application of clause 4.5 (3) (b) of LLEP 2008 that states *“if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out”*

Based on the site area pre-subdivision of 7,759.25sqm which includes Lot 1, 2 and part Lot 3, the proposal is fully compliant with the maximum allowable FSR.

- The proposal is consistent with the objectives of the development standard as provided in clause 4.4 of the LLEP 2008.
- The proposed variation ensures that the proposal is consistent with the Edmondson Park 'Urban' Future Character Statement within the LDCP 2008, which identifies that *"taller buildings are encouraged to frame Croatia Avenue and the Maxwells Creek Urban Park. Buildings are predominantly between 3 – 6 storeys and massed towards the public realm"*.
- The predominant building height is compliant with the maximum building height development standard, with exceptions limited to lift overruns and the parapet of Building C reflecting a variation of no more than 1.2 metres. The lift overruns are set back from the building edge and unlikely to be visible from the public domain.
- The site can readily accommodate the proposed development as it is highly accessible by public and private transport, is located near the future Edmondson Park Town Centre and is in a location marked as being suitable for facilitating taller buildings between 3 to 6 storeys.
- The potential environmental impacts of the variation have been documented and detailed in the SEE submitted with the DA.

Overall, it is considered that the proposed variation to clause 4.4 of the LLEP 2008 is acceptable. On the basis of the above, strict compliance in this case is considered unreasonable and unnecessary.

#### **4.4. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS**

The proposed non-compliance is a direct result of the proposed roads (to be constructed and dedicated to Council) being excluded from the calculation of site area. As indicated previously, it is common practice in greenfield development to include the area of the proposed roads in calculating FSR, particularly where strategic planning documents (in this case the Edmondson Park Indicative Layout Plan from the LDCP 2008) nominate the future roads to be constructed. Moreover, it is our view that the inclusion of these areas is consistent with the definitions set out in the Dictionary and clause 4.5 of LLEP 2008.

The non-compliances to the FSR on an individual lot basis will give rise to no additional environmental impacts.

#### **4.5. ANY MATTER OF SIGNIFICANCE**

The non-compliance will not raise any matter of State or regional significance.

#### **4.6. PUBLIC BENEFIT**

There is no public benefit in maintaining strict compliance with the development standard as there are no unreasonable impacts that will result from the variation. The benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

## 5. CONCLUSION

On the basis that the proposed lots are considered independently, the proposed FSR of Lot 1 is 1.9:1 (representing 24.71% variation) and the proposed FSR of Lot 2 is 1.92:1 (representing a 28.31% variation).

Strict compliance with the FSR development standard is both unreasonable and unnecessary in the circumstances of the case for the following reasons:

- The proposal is consistent with the objectives of the FSR development standard.
- Urbis maintains the view that FSR should be calculated on the basis of the site area pre-development, which complies with the maximum 1.5:1 standard.
- There are no unreasonable environmental impacts associated with the variation to the FSR when considered individually for Lots 1 and 2.

Based on the reasons outlined above, it is concluded that the request is well founded and that the particular circumstances of the case warrant flexibility in the application of the FSR development standard.