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## **Clause 4.6 Request to vary a Development Standard**

659 Victoria Road, Melrose Park  
Stage 2 DA/1025/2017 (VRS Lot AD) Amended Plans



submitted to the City of Parramatta Council  
on behalf of:  
*PAYCE BS 2 Pty Ltd & SH Melrose Development 2 Pty Ltd*

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## 1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Parramatta Local Environmental Plan 2011* (PLEP 2011).

Our assessment of this proposal concludes that it is **not inconsistent** with the approved Concept Plan Approval 9DA 1157/2016), which was previously subject to a Clause 4.6 request to vary the PLEP 2011 height control. Notwithstanding (and for the avoidance of any doubt) a Clause 4.6 Request has also been submitted to support this application if required.

This Request relates to Clause 4.3 Height of Buildings of the PLEP 2011.

This Request has considered the detailed guidance within the NSW Department of Planning and Environment (DP&E) guideline *Varying Development Standards: A Guide, August 2011* (DP&E Guide) and planning system circular PS 17-006 *Varying Development Standards, December 2017*, and addresses the findings and established principles (as relevant) of the following judgements of the NSW Land and Environment Court (NSW LEC):

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and [2015] NSWCA 248.

The following sections of this Request critically analyse the proposed encroachments into the height plane, their impact and reasonableness. This analysis demonstrates that an exception to the building height development standard is warranted in this instance and will provide for a significantly better urban outcome than a compliant development.

## 2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard. Importantly, on land where a SI applies and Clause 4.6 is relevant, the powers *State Environmental Planning Policy No.1 – Development Standards* do not apply.

The DP&E Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI.

The DP&E Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment.

Table 1 provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.

| Information Requirement                                               | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Relevant Applicable Planning Instrument                               | PLEP 2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Zoning of the Land                                                    | B4 Mixed Use                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Objectives of the Zone                                                | <p>The objectives of zone B4 Mixed Use are:</p> <ul style="list-style-type: none"> <li>• <i>To provide a mixture of compatible landuses.</i></li> <li>• <i>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.</i></li> <li>• <i>To encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i></li> <li>• <i>To create opportunities to improve the public domain and pedestrian links.</i></li> <li>• <i>To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i></li> <li>• <i>To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i></li> </ul>                                                                                    |
| Development Standard to be Varied                                     | Building Height                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Nature of the Development Standard                                    | A numerical height control (28 metres)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Relevant Development Standard Clause                                  | Clause 4.3 <i>Heights of Buildings</i> of the PLEP 2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Objectives of the Development standard                                | <p>The objectives of Clause 4.3 <i>Heights of Buildings</i> are:</p> <ul style="list-style-type: none"> <li>• <i>to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan;</i></li> <li>• <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development;</i></li> <li>• <i>to require the height of future buildings to have regard to heritage sites and their settings;</i></li> <li>• <i>to ensure the preservation of historic views;</i></li> <li>• <i>to reinforce and respect the existing character and scale of low density residential areas; and</i></li> <li>• <i>to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</i></li> </ul> |
| Development Standard Numeric Control for the Site                     | Maximum building height of 28 metres                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Proposed Numeric Control                                              | Maximum building height of RL 61.8 (29.738 metres), exceedances are limited to 8 locations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Percentage Variation Between the Proposal and the Planning Instrument | An increase of 1.78 metres represents a 6.4% increase above the PLEP 2011 building height development standard of 28 metres for only a single point                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

Table 1: DP&E Guide recommended planning information and numeric overview





Figure 1: PLEP 2011 zoning map excerpt (Source: PLEP 2011)



Figure 2: PLEP 2011 building height development standard map excerpt (Source: PLEP 2011)

### 3. Proposed Development (amended plans)

The proposal is identified as Stage 2 (south-east corner of site) of approved concept plan DA/1157/2016 comprising earthworks, excavation of 3 basement levels providing 272 car parking spaces, construction of 3 x 7-9 storey residential flat buildings containing 234 residential apartments, strata subdivision, landscaping, new internal roads, public domain works, and Torrens title subdivision.

#### *Original Proposal*

The original DA as submitted was consistent with the approved Concept Approval and also maintained the 28 metre height limit in the PLEP 2011.

It is noted that the Concept Approval was determined on the basis of a Clause 4.6 objection to the 28 metre height limit in the PLEP 2011 for a number of buildings across the site.

#### *Amended Proposal*

During the assessment of this DA, Council officers identified stormwater and overland flow as issues to be addressed as part of the detailed DAs for Stages 2 (this DA) and Stage 3 (DA/1042/2017).

In particular, Council raised issues relating to the influence of the Victoria Road overland flow assessment on the proposed levels for the entire VRS development, including Stage 2.

In response to this issue, the proposed RLs for the finished ground levels on superlots AD (Stage 2) and AB (Stage 4) are required to be raised by up to approximately 650mm above the 28 metre height limit in order to address potential stormwater and overland flooding issues identified by Council officers.

The increase in ground levels and accommodating the recently agreed maximum flood and freeboard levels necessitates the raising of the entire Stage 2 and Stage 4 approved superlots and building envelopes by up to 750mm.

This amendment results in additional minor encroachments to the 28 metre LEP building height control (Figures 3 - 8) relating to this DA. Table 2 details the minor nature of the areas of non-compliance ranging from only 0.35 metres to 1.78 metres (1.3% to 6.4% increase) above the height control due to the existing sloping nature of the site.

The worst case exceedance of 28 metre height plane is in the south-east corner of the western wing at Level 6, at 29.780 metres above existing ground levels.

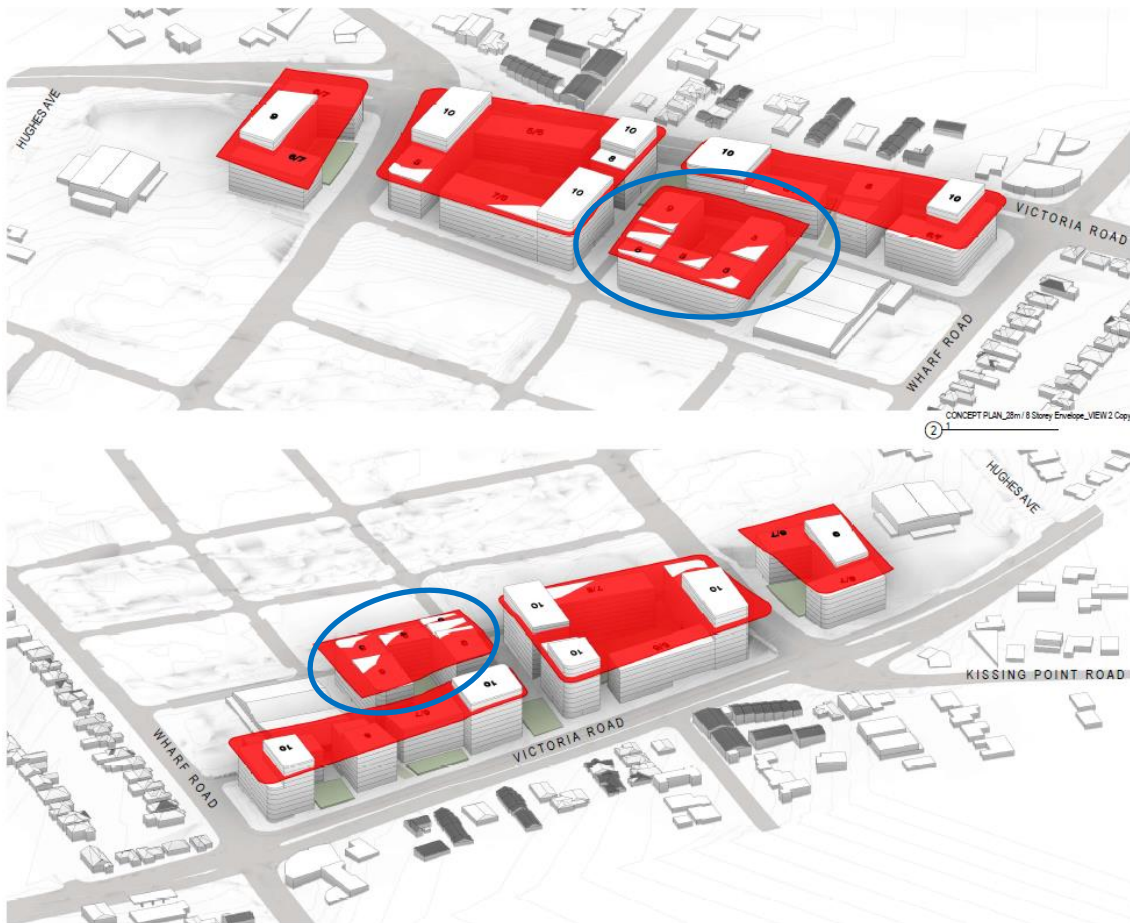


Figure 3: Areas of minor encroachment for Stage 2 on 28 metre LEP height limit (Source: AJC)



Figure 4: Areas of minor encroachment for Stage 2 on 28 metre LEP height limit east elevation (Source: AJC)





Figure 5: Areas of minor encroachment for Stage 2 on 28 metre LEP height limit west elevation (Source: AJC)



Figure 6: No areas of encroachment for Stage 2 on 28 metre LEP height limit north elevation (Source: AJC)



Figure 7: Areas of minor encroachment for Stage 2 on 28 metre LEP height limit south elevation (Source: AJC)

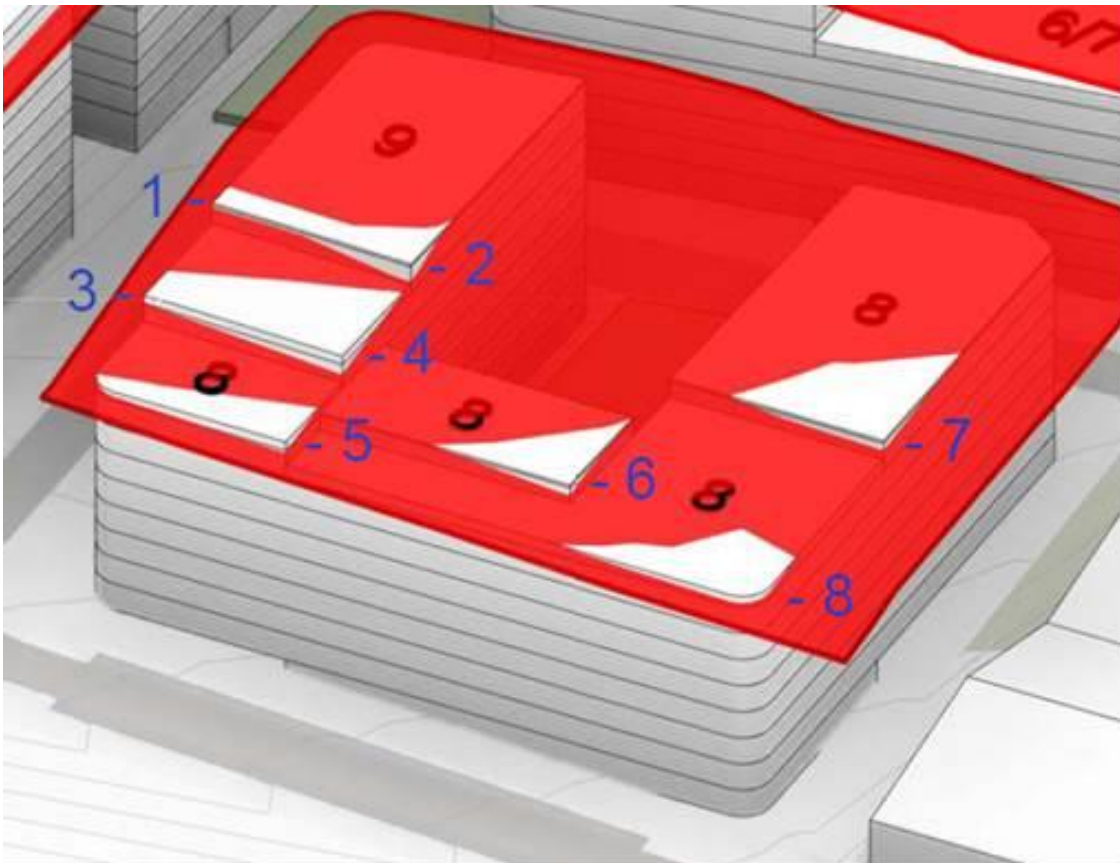


Figure 8: Approx areas of non-compliance for Stage 2 (Lot AD) (Source: AJC)

| Area | Location (approx)                    | Proposed height (RL) | LEP height control (RL) | Exceedance (metres) | % Increase |
|------|--------------------------------------|----------------------|-------------------------|---------------------|------------|
| 1    | West - Level 8<br>South-West Corner  | 61.800               | 61.105                  | 0.695               | 2.5%       |
| 2    | West - Level 8<br>South-East Corner  | 61.800               | 60.062                  | 1.738               | 6.2%       |
| 3    | West - Level 7<br>South-West Corner  | 59.500               | 58.277                  | 1.223               | 4.4%       |
| 4    | West - Level 7<br>South-East Corner  | 59.500               | 57.948                  | 1.552               | 5.5%       |
| 5    | West - Level 6<br>South-East Corner  | 56.400               | 54.620                  | 1.780               | 6.4%       |
| 6    | South - Level 6<br>South-East Corner | 55.800               | 55.004                  | 0.796               | 2.8%       |
| 7    | East - Level 6<br>South-East Corner  | 55.600               | 54.140                  | 1.460               | 5.2%       |
| 8    | East - Level 5<br>South-East Corner  | 53.300               | 52.949                  | 0.351               | 1.3%       |

Table 2: Location of approx. areas of non-compliance (Source: AJC)

## **4. Legislative Context**

### **4.1. Clause 4.6 Exceptions to Development Standards**

Clause 4.6 of the PLEP 2011 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

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

Subclauses (3), (4) and (5) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

#### **4.1.1. Clause 4.6(3)**

Clause 4.6(3) requires that development consent must not be granted for a 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 that:

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

#### **4.1.2. Clause 4.6(4)**

Clause 4.6(4) requires that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (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 has been obtained.*

#### **4.1.3. Clause 4.6(5)**

Clause 4.6(5) requires that the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

## 4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;* and
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248.*

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

### 4.2.1. Winten Property Group Limited v North Sydney Council (2001)

The *Winten Property Group Ltd v North Sydney Council (2001)* case posed the following questions to be addressed when considering objections to development standards:

- Is the planning control in question a development standard?
- If so, what is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
- Is the objection well founded?

### 4.2.2. Wehbe v Pittwater Council (2007)

This case expands on the findings of *Winten Property Group Limited v North Sydney Council (2001)* case and establishes a five-part test 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

It is noted that the DP&E Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council (2001)* case and the Wehbe Tests.



#### **4.2.3. Four2Five Pty Ltd v Ashfield Council (2015)**

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject site; and
- compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.

### **5. Assessment of the Variation to building height development standard**

The PLEP 2011 contains a RL 28 metre (approximately 8 storeys) maximum building height control for the entire site. This maximum building height is higher than the existing nearby low-density residential areas of RL 9 metres (approximately 2-storeys).

The maximum building height constitutes the built form baseline from which any variation request is measured and assessed.

The proposal seeks to increase the maximum 28 metre height control by 1.78 metres to accommodate localised increases in building height across the site (Figures 3-8) and address potential flooding and stormwater issues as discussed in the following sections of this report.

The following assessment comprehensively considers the provisions of CI 4.6 which has also been informed by an analysis of the relevant case law.

#### **5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary**

Following requests by Council officers to further address stormwater and overland flow issues, strict compliance of the 28 metre height control is considered to be unreasonable or unnecessary as the benefits of addressing flooding and overland flow issues far outweigh the negligible impacts of the increases in building height.

#### **5.2. Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard**

The development, including the minor height non-compliance, will provide for future housing for the locality consistent with an approved Concept Plan. In this context there are sound planning grounds and significant benefits to justify contravening the building height development standard.

The proposed increase in the ground level and building envelopes are considered to result in a superior built form outcome for the following reasons:

- the resultant public domain interface has been carefully designed to ensure a smooth transition from public to private places – this includes a series of well-designed and integrated retaining walls, stairs, ramps and landscape treatments to ensure legibility, sense of place as well as privacy for future residents
- improved design of Lift Lobby 3 in terms of relationship with the adjacent public domain (Figure 9)
- improved courtyard for lower units on the south eastern corner (Figure 10)
- the resultant amended ground floor levels maintain safety and appropriate mitigation measures to address stormwater and potential overland flow issues as identified by council officers
- the proposed increase in building envelopes are:
  - minor in the context of the approved built form and given the increased ground levels will not be perceived as an increase in approved bulk or scale
  - limited to southern areas of the buildings in direct response to the sloping topography of the site
  - minor and extend to essentially roof features, parapets and do not include any additional floorspace
  - will not lead to any adverse impacts on existing or proposed streetscape, adjoining properties and amenity of the existing locality
- the proposed increase in heights appropriately responds to the topography of the site by stepping the proposed buildings with the fall of the land



Figure 9: Increased building levels to address flooding has improved the relationship of Lift Lobby 3 to the public domain (Source AJC)



Figure 10: Increased building levels to address flooding has improved the courtyards in south eastern corner (Source AJC)

For the reasons above, the proposed development provides for a significantly superior urban design outcome for the site, when compared to a strictly height compliant scheme.

### 5.3. Wehbe Tests

*Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard*

The proposed variation to the building height development standard will be achieved notwithstanding the non-compliance with the standard as outlined in this report.

*Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*

The underlying objective and purpose of the height development standard, (including transition of built form, minimise impacts, safeguard heritage, respect existing character and overshadowing) is considered relevant to the development.

However (as discussed above) it is considered that the localised minor increase in heights will facilitate an improved response to flooding and overland flow issues while resulting in an improved public domain interface that is respectful of the existing urban character, have a substantially positive urban design impact and acceptable amenity impacts.

Therefore, the localised increase in heights represent a significant improvement over a compliant scheme of uniform height and therefore better achieves the objectives of the development standard.

*Wehbe Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*

The provision of a development that strictly complied with the development standard would result in a significantly inferior urban design outcome for the site, in particular the public domain ground level interface and poor response to flooding and overland flow issues.

*Wehbe Test 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*

The proposed increase in height is in response to specific contextual issues associated with this site and is not considered to result in the development standard being virtually abandoned or destroyed.

*Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone*

The land has been zoned appropriately and the controls applicable to the site are generally acceptable, despite the proposed localised increases in height. As discussed in this report, the proposed development is consistent with the objectives of the zone.

For the reasons outlined in in this report, the proposed variation in height is minor and built form design response would better achieve the objectives of the zone than a strictly height compliant scheme.

## 5.4. Clause 4.6(4) – Consistency with Objectives

This Request has adequately addressed the matters required to be demonstrated by subclause (3), as outlined in Section 5 of this submission. The proposed development is consistent with the objectives of the B4 Mixed Use zone as outlined in Table 3 and the building height development standard as outlined in Table 4.

In addition, the proposed development is a superior development to a strictly height compliant scheme and therefore better achieves the objectives of the building height development standard and the zone. The proposal is therefore in the public interest.

| Zone B4 Mixed Use                                                                                  |                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Objectives                                                                                         | Achievement of Objectives                                                                                                                                                                                                        |
| <i>Provide a mixture of compatible land uses.</i>                                                  | The proposal maintains compatible land-uses with the surrounding area.                                                                                                                                                           |
| <i>Encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i> | The additional building height provides for improved public domain, landscaping areas while supporting pedestrian-through site links, a human scale of development and fosters an active, vibrant and sustainable neighbourhood. |



| <b>Zone B4 Mixed Use</b>                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Create opportunities to improve the public domain and pedestrian links.</i>                                          | <p>The proposal provides for significantly improved public domain, pedestrian site permeability, open space, pedestrian links, landscaped streetscapes and provision of landscaped buffer between the private and public domain.</p> <p>The proposed variation to the building height development control enables this objective to be better met through better response to stormwater and flooding issues for future residents and visitors to the site.</p> |
| <i>Support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i> | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <i>Protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i>       | There are no designated special areas within or nearby the site and this objective is therefore not relevant to this site.                                                                                                                                                                                                                                                                                                                                     |

Table 3: Consideration against the Objectives of the Zone

| <b>Clause 4.3 Height of Buildings Development Standard</b>                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Objectives</b>                                                                                                                                                                                                       | <b>Achievement of Objectives</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <i>Nominate heights that will provide a transition in built form and land use intensity.</i>                                                                                                                            | The variation of the building height development control will ensure the development provides a varied and interesting built form, which provides for an appropriate scale of development.                                                                                                                                                                                                                                                                                                                                                      |
| <i>Minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>                                                                                                   | The proposed additional height will not result in loss of privacy or unreasonable loss of solar access to existing properties.                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <i>Require the height of future buildings to have regard to heritage sites and their settings.</i>                                                                                                                      | The proposed variation to the building heights development control does not have any adverse impacts on nearby heritage items or their setting.                                                                                                                                                                                                                                                                                                                                                                                                 |
| <i>Ensure the preservation of historic views</i>                                                                                                                                                                        | The proposal does not interfere with any existing historic views.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <i>Reinforce and respect the existing character and scale of low density residential areas.</i>                                                                                                                         | <p>The proposed scale is appropriate for the site and the variation of the Height of Building development standard is warranted and will have significant positive visual and urban design impacts.</p> <p>The Height of Buildings development standard for the VRS envisages a high density development and therefore does not require that the development replicate the scale of the surrounding low density areas. The proposal would not have an adverse impact on the character and scale of the nearby low density residential area.</p> |
| <i>Maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</i> | <p>The variation to the building height development control would not have an adverse impact on sky exposure and daylight to the sides and rear of the proposed towers or to key areas of the public domain.</p> <p>The additional height would not have any adverse impacts on existing (or likely future) neighbouring residential properties.</p>                                                                                                                                                                                            |

Table 4: Consideration against the Objectives of the Development Standard

## **5.5. Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning**

The proposed exceedance of the maximum height development standard for the site does not raise any matters of State or Regional Planning significance as:

- the development is not of a size or nature to have more than local impact;
- the proposed height exceedances are minor and localised to discrete locations and facilitate the increased levels to address flooding and potential overland flow
- the increase in the height development standard is minor in the context of the development and broader Melrose Park regeneration;
- the exceedance in height development standard will have a positive impact on public domain interface and future safety of residents;
- there are no significant amenity or environmental impacts; and
- the site is not a site designated to be of State significance.

## **5.6. Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard**

As demonstrated in the previous sections of this report, the variation to the development standard would establish the best urban design response for the site and response to flooding and overland flow issues.

Conversely, a strictly compliant development would result in a substantially inferior outcome. In light of the significant public benefits arising from allowing a variation, it cannot be reasonably assumed that there is any public benefit in maintaining the existing building height development standard.

## **5.7. How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act?**

Sections 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are quoted below:

*The objects of the Act are:*

- (a) *to encourage:*
  - (i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
  - (ii) *The promotion and coordination of the orderly and economic use and development of land.*

The development is wholly consistent with the objectives specified in Section 5(a)(i) and (ii) of the EP&A Act, as:

- the site is located within an existing urban area and within a zone that establishes a high density environment;
- the redevelopment of the site for residential uses will create a new vibrant neighbourhood, maximises the efficient use of the land and will contribute to urban consolidation and reducing demand to develop more environmentally sensitive lands;
- the development promotes the orderly and economic use and development of the land as it delivers new housing within an established urban environment located on a rapid bus corridor (Victoria Road) without significant or unreasonable environmental impact; and
- the proposal addresses potential flooding and stormwater issues and leads to an improved public domain interface and urban design built form outcome for residents and visitors.

Strict compliance with the building height development standard would hinder the attainment of the objective of the EP&A Act, as such a development.

## **5.8. Is the Objection Well Founded?**

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

## **6. Conclusion**

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6 of the Parramatta LEP 2011.

It has been demonstrated that compliance with the 28 metre height development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard.

The proposal is consistent with the objectives of the development standard and the B4 mixed use zone. Given the high standard of the proposal and public benefits the development is in the public interest.

Overall, and for the reasons set out in this report, the proposed development represents a superior outcome for the site and it is therefore justified and appropriate that the development standard be varied as proposed.