



Revised Architectural Roof Feature and Clause 4.6

163-165 GEORGE STREET PARRAMATTA



QUALITY ASSURANCE

PROJECT: Revised Architectural Roof Feature and Clause 4.6

ADDRESS: 163-165 George Street Parramatta

COUNCIL: City of Parramatta

AUTHOR: Think Planners Pty Ltd

Date	Purpose of Issue	Rev	Reviewed	Authorised
3 July 2018	Draft Issue	A	SF	AB
26 February 2018	Submission Issue	B	SF	AB
8 April 2019	Revised	C	SF	SF

CLAUSE 5.6 ARCHITECTURAL ROOF FEATURES

Clause 5.6 of the Parramatta LEP 2011 states the following:

1. *"The objectives of this clause are as follows:*
 - a. *to allow roof features that integrate with the building composition and form, where the height of the building also satisfies the objectives of clause 4.3 of this Plan.*
2. *Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
3. *Development consent must not be granted to any such development unless the consent authority is satisfied that:*
 - a. *the architectural roof feature:*
 - i. *comprises a decorative element on the uppermost portion of a building, and*
 - ii. *is not an advertising structure, and*
 - iii. *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - iv. *will cause minimal overshadowing, and*
 - b. *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature."*

The extracts provided overleaf of the proposed Cathedral Building shows that most of the built form is to be located under the building height limits of RL14. The additional building features that are situated above RL14 comprise two components of proposed architectural roof features.

The proposed Cathedral is purposely designed to be prominent and symbolic for the Greek Orthodox Community, and to make an architectural contribution to the City of Parramatta. The architectural design is not intended to be recessive in the streetscape as the Cathedral is to serve as a landmark building for the locality and the local community. Further detailed discussion about the origins of the built form and design

features are provided in the Urban Design Analysis that accompanies this development application.

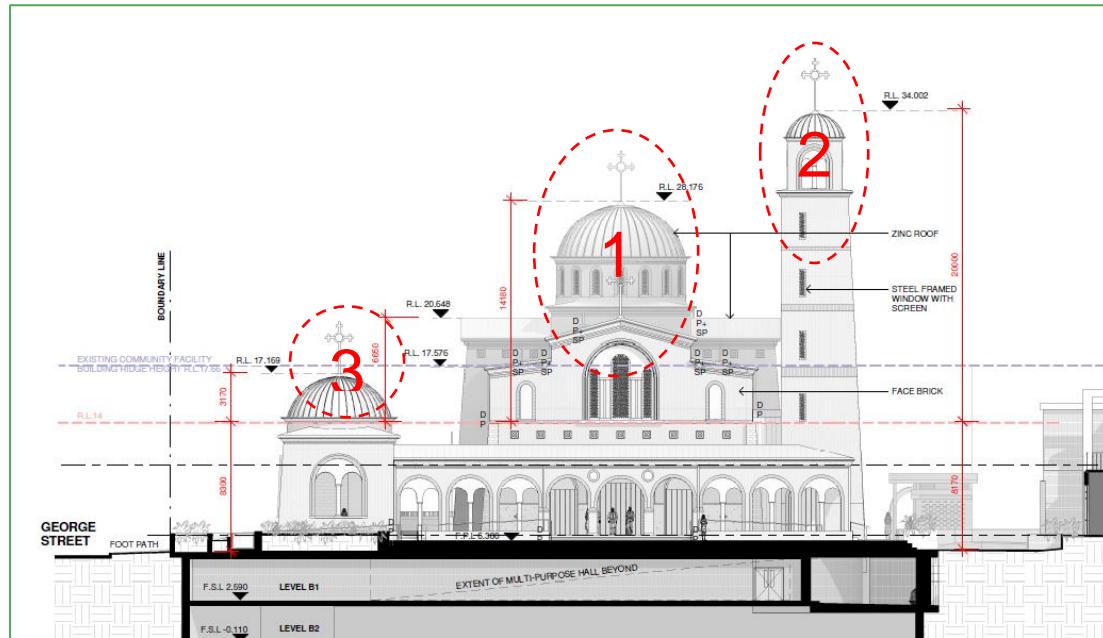
The proposed Cathedral is designed so that as you enter the Church building, the faithful believe they are entering heaven. Orthodox Churches have a more intimate and inward style than those of other Christian denominations. The proposed Cathedral is said to be the embodiment of the geometry of the spherical dome, square base, columns within the square footprint.

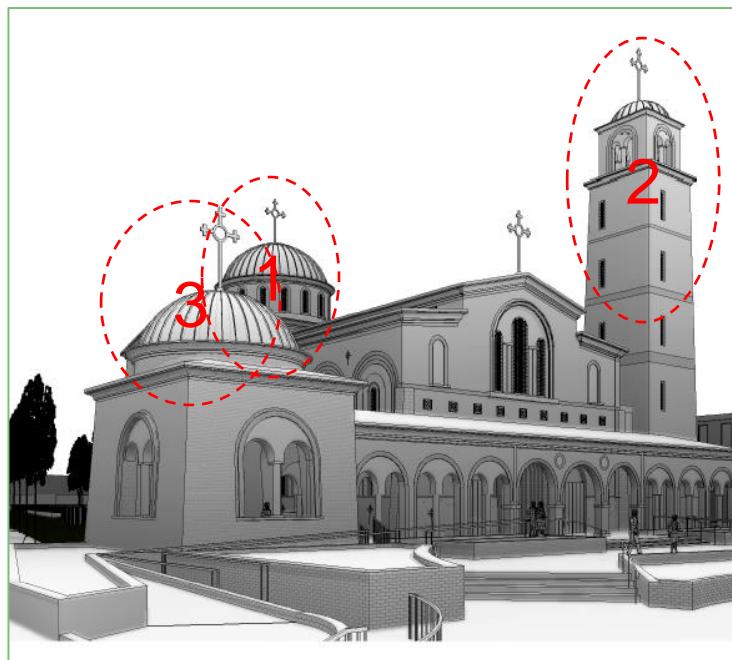
The Cathedral floor is raised 1m above natural ground level, although there is no ecclesiastical requirement to elevate a church in this manner it provides several benefits as it gives the Cathedral additional presence as it hovers above street level, requiring participants to make an additional psychological/spiritual journey upwards before entering.

The proposed Cathedral is to be a significant landmark with high end materials and ornate detailing externally and internally, all of which has been significantly influenced by the 200-year history of the Orthodox Christian Church.

The proposed Cathedral is designed with several components of architectural roof feature that seek to deliver a magnificent building set within a large area of public space.

When the proposed building height is broken down into the following key elements the following considerations arise.

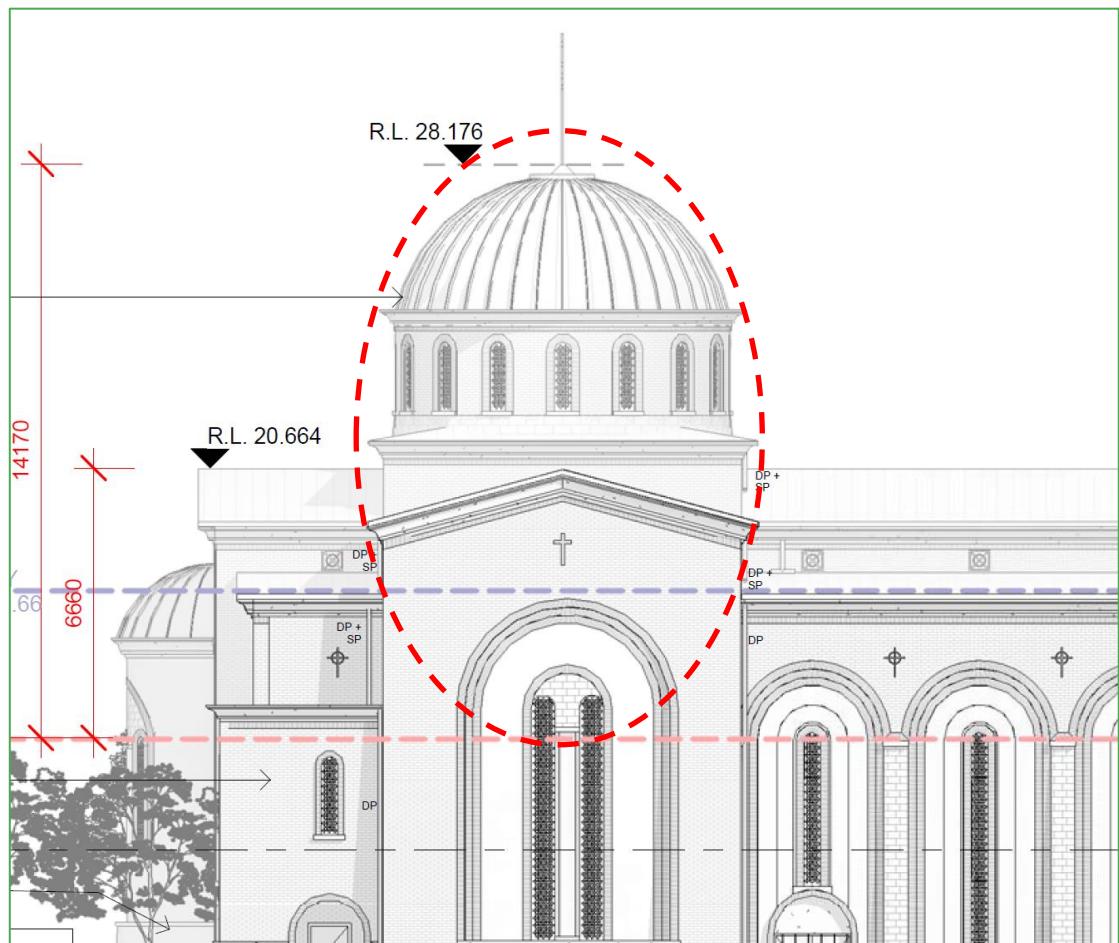




ARCHITECTURAL ROOF FEATURE 1

The proposed dome shaped raised roof area located above the Solea (as highlighted in the red dash below) must be discounted from the overall proposed maximum building height as this clearly is a decorative element of the upper most portion of the building, that does not include floor space, will cause minimal over shadowing and is not an advertising structure.

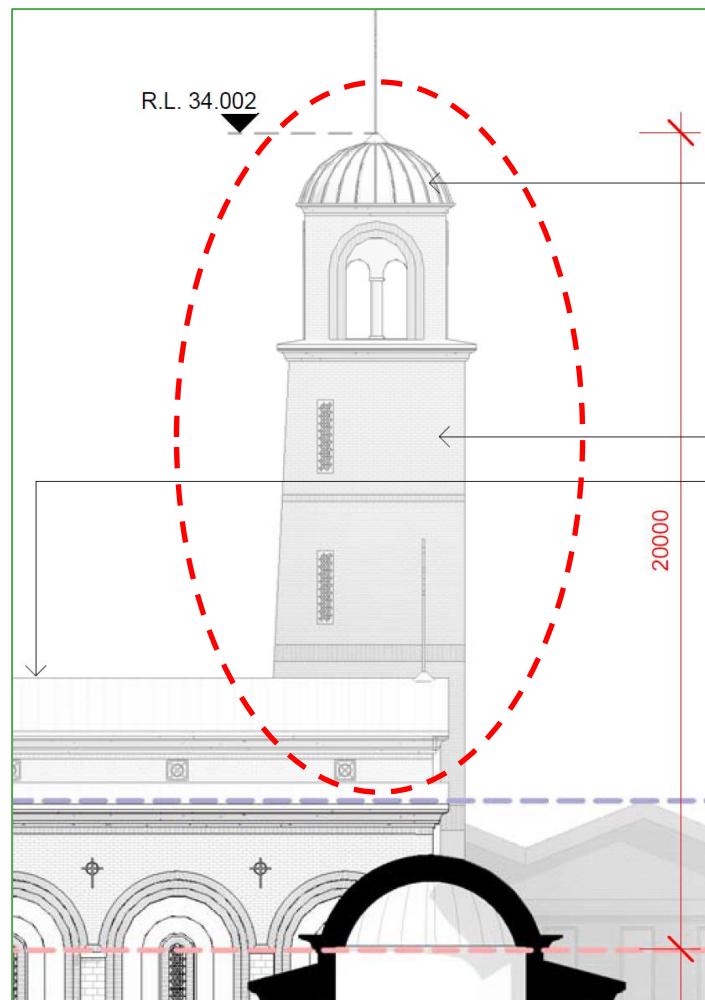
This portion of the proposed Cathedral is an architectural roof feature and not included in a calculation of maximum building height.



ARCHITECTURAL ROOF FEATURE 2

The proposed bell-tower feature of the Cathedral which also has a dome shaped roof (as highlighted in the red dash below) must be discounted from the overall proposed maximum building height as this clearly a decorative element of the upper most portion of the building, that does not include floor space, will cause minimal over shadowing and is not an advertising structure.

This portion of the proposed Cathedral is an architectural roof feature and not included in a calculation of maximum building height.



ARCHITECTURAL ROOF FEATURE 3

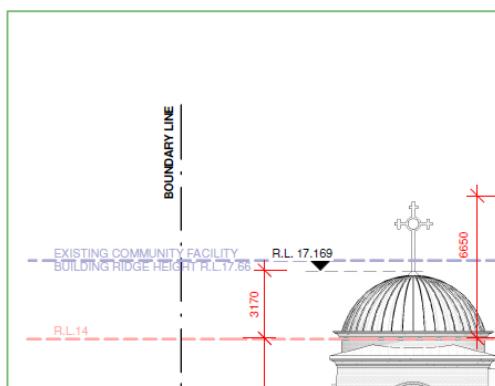
The uppermost portion of the font building (as highlighted in the red dash below) must also be discounted from the overall proposed maximum building height as this clearly is a decorative element of the upper most portion of the building, that does not include floor space, will cause minimal over shadowing and is not an advertising structure.

This portion of the proposed Cathedral is an architectural roof feature and not included in a calculation of maximum building height.

There is a small exception to the requirements for architectural roof feature which is the mezzanine level within the main building which comprises 130m². This small area of mezzanine relates to 22.8% of the total ground floor of the Cathedral and this part of the proposed building is addressed with regard to the provisions of Clause 4.6 of the LEP in the following section of this report.

It should be highlighted that if the proposed building were for other permitted purposes on this site such as a centre-based child care facility, community facility, function centre, office premise, restaurants or café, then development of a single storey building with a mezzanine would fit well within the maximum permitted building height of RL14. The building height proposed is driven by the fact that the proposal is for a landmark place of public worship for the Greek Orthodox Church.

The floor to ceiling height from the ground floor of the main Cathedral is 13.924m. Clearly this is an architectural design feature that is driven by the fact the proposal is for a Greek Orthodox Church. As mentioned previously the genesis of the Cathedral design is well founded in the history of the Church and the vision to deliver a landmark building adding the rich heritage of the Greek Orthodox Church in Parramatta.



CLAUSE 4.6 DEPARTURE – HEIGHT

The development application plans that accompany this Clause 4.6 departure illustrate that the proposal exceed the mapped maximum building height of RL14 height control with the upper level of the Cathedral building protruding above the RL14 height line.

The extent of departure to each of the buildings is the Main Cathedral Building (including mezzanine) – 6.66m/RL 20.664 (47%).

With the exception of the mezzanine space which is 130m² in floor area, the majority of the extent of non compliance relates to the higher than unique floor to ceiling heights needed to create this symbolic Greek Cathedral Building. The floor to ceiling height within the Cathedral is in the order of 13m which a far greater floor to ceiling height is required to reflect the unique and symbolic development.

A detailed discussion against the relevant provisions of Clause 4.6 are provided below with further discussion against the relevant case law ‘tests’ set down by the Land and Environment Court.

SUMMARY OF VARIATION PROPOSED

This Clause 4.6 variation has been prepared in support of development application for the construction of new purpose built ‘Place of Public Worship’ at 163 -165 George Street, Parramatta.

The site currently accommodates a large two storey 1960s era commercial building that was the former Parramatta Workers Club within the south-western portion of the site and open at-grade car parking areas within a large compound. At present the site is currently used for a number of activities consistent with recent development approvals on the site.

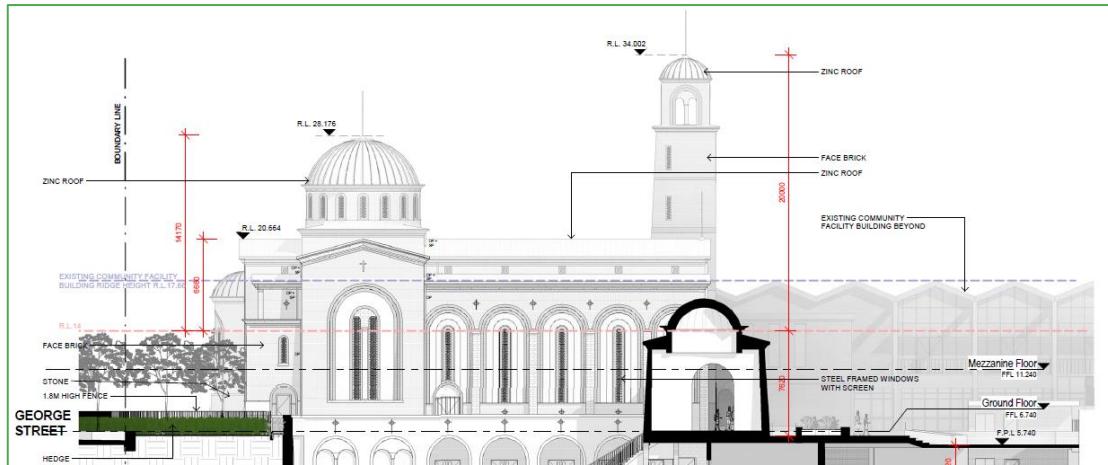
The existing building exceeds the nominated height of building – RL14.

The subject site comprises a number of permissible uses consistent with the intent of the Greek religious community to make the site a “campus style” environment with numerous related activities that serve its community and the broader community of the area.

The current proposal will result in a grand cathedral that will provide religious services to the immediate Greek, and the wider, community. The proposal is consistent with the vision for the site that was articulated in a Planning Proposal that was the subject of public consultation, professional assessment, Councillor endorsement, Department of Planning and Environment endorsement, and ultimately gazettal.

The subject site is prescribed a RL14 building height control under the Parramatta Local Environmental Plan 2011. The RL14 height control is unique in the LEP, and at

its genesis is an intent to retain Heritage View Corridors. The proposed cathedral exceeds the maximum height limit by up to 6.66m. This is demonstrated by the section below.



ESTABLISHING THE RELEVANT TESTS

A Clause 4.6 variation request has been prepared, noting that the request addresses a number of recent Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micau Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*, as well as *Zhang v Council of the City of Ryde*.

The key tests or requirements arising from the above judgments are:

- The consent authority is to be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and zone, and it is not a requirement to “achieve” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives.
- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in Wehbe v Pittwater.
- When pursuing a Clause 4.6 variation request are there sufficient environmental planning grounds to justify the variation; and
- The proposal is required to be in ‘the public interest’.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the building height standard;
- Demonstrating consistency with the zoning; and
- Satisfying the relevant provisions of Clause 4.6.

CLAUSE 4.6 VARIATION: HEIGHT OF BUILDING

The proposal is non-compliant with Clause 4.3 – Height of Building which stipulates that the maximum building height within the subject land parcel is RL14.

The variation for the upper most part of the proposal is set out as follows –

Maximum RL – 34.002
Height Limit – RL14
Variation (m) – 20.002
Variation (%) – 143%

While the Cathedral as a whole does not comply with the RL14 height control, the extent of the variation is emphasised as a result of the two architectural point encroachments.

The majority of the Cathedral mass is at RL20.664. The variation for the majority of the mass of the building is set out as follows –

Cathedral lower roof RL – 20.664
Height Limit – RL14
Variation (m) – 20.002
Variation (%) – 47%

The above section illustrates via a blue dotted line the existing substantial building on the site that exceeds RL14 and can be seen in the photo below.



PARRAMATTA LEP CLAUSE 4.6

Clause 4.6 of the Parramatta Local Environmental Plan 2011 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclauses 3-5 which provide:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Each of these provisions are addressed in turn.

Clause 4.6 (3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved.

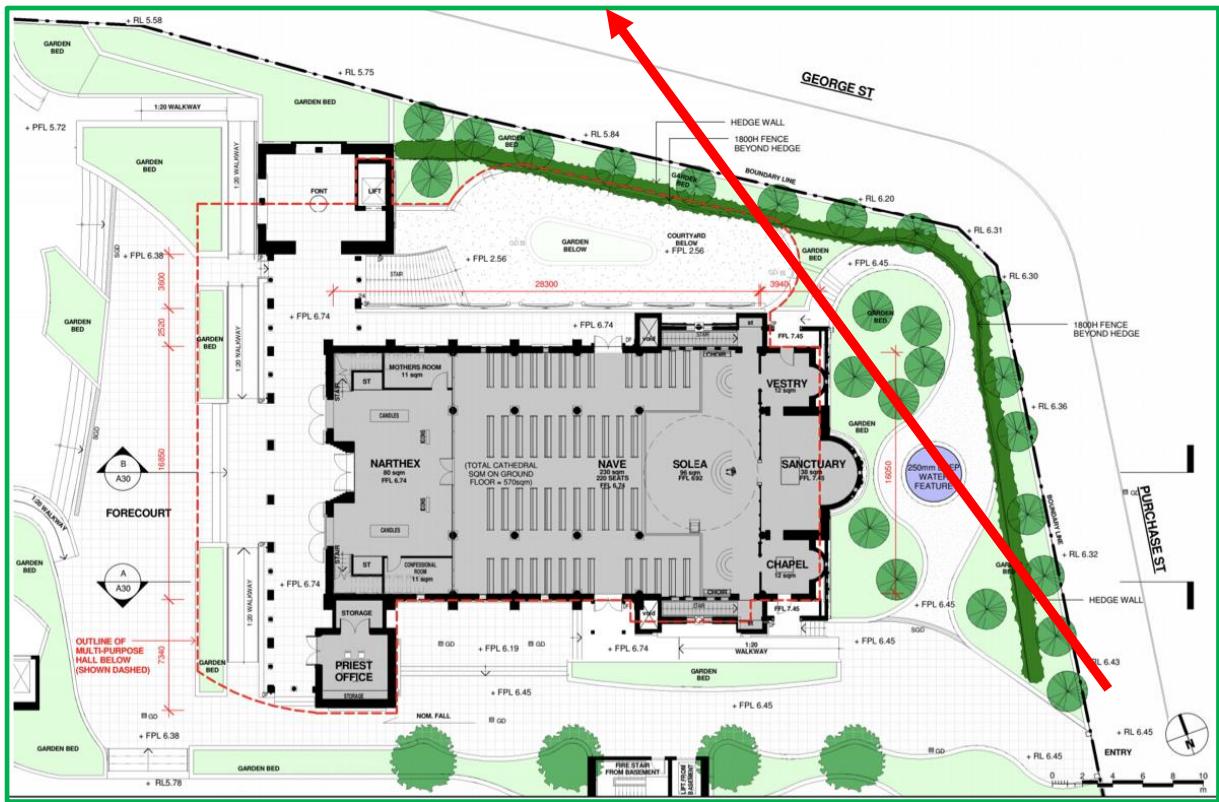
The objectives of the building height development standard are stated as:

- (1) *The objectives of this clause are as follows:*
 - (a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (c) *to require the height of future buildings to have regard to heritage sites and their settings,*
 - (d) *to ensure the preservation of historic views,*
 - (e) *to reinforce and respect the existing character and scale of low density residential areas,*
 - (f) *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.*

Consistent with the Objectives

The development seeks to depart from the height control noting that the proposal remains consistent with the objectives of the clause and is an appropriate outcome on the site because of the following:

- The proposal is for a Cathedral of grand proportions, that is purpose built and is a unique development proposal, not generally anticipated in the standardised planning controls.
- The variation is not based on, nor seeking, an uplift that would lead to additional development yield on the site. It is a variation founded on the unique nature of the built form, the unique sites location, and the unique design of the proposed Cathedral.
- The Cathedral building is to occupy a small part of the site considering that the extent of variation footprint is 570m² and the entire site is 13,425m², thus the area subject to the variation represents a minor 4% of the site itself.
- For this site, the RL14 height limit is in place to protect heritage views between items of heritage in the vicinity of the site. A heritage view corridor is nominated across a small portion of the site (the north east corner of the site). The proposed Cathedral sits outside of the view corridor and there is no intrusion into the view corridor. Accordingly, the intent of the RL14 height limit is met as the proposal does not interrupt or otherwise impact on the heritage view corridor. An approximation of the heritage view corridor in relation to the proposal is shown below. It is noted that not only is the built form outside of the view corridor, but the point encroachments are located at the western end of the proposal and the dome is central to the building.



- Given the size of the site, there are no overshadowing impacts from the proposal that harm the amenity of any adjoining properties or public spaces.
- The proposal is located within an SP1 – Special Activities: Educational Establishment and Place of Worship zone. The development fulfils the zoning requirements by providing a Place of Worship.

Unique Circumstances

The unique circumstances of the case that warrant support of the departure are:

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the zone objectives that are stipulated as:

- *To provide for special land uses that are not provided for in other zones.*
- *To provide for sites with special natural characteristics that are not provided for in other zones.*
- *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.*

The proposal is directly in the public's interest as it is to provide a special land use in the form of a Place of Worship that is not provided for in other zones, and therefore fulfils the requirements of the SP1 zone. It is noted that the site will include a forecourt that will be accessible to the public and contributes to the spaces and places within Parramatta CBD.

Clause 4.6(5)

As addressed, it is understood the concurrence of the Secretary may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the maximum height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and unique site attributes associated with the subject site; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal as the proposal is consistent with the underlying objectives of the control and the fact that the non-compliance does not lead to view loss nor can it be said to set an undesirable precedent for future development, given within the locality based on the observed building form in the locality (noting majority of recently approved comparable flat buildings within the immediate locality also feature non-compliance to lift over-run and stairwell) and based on the unique site attributes.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The public benefit of the variation is that it will appropriately facilitate the provision of a place of public worship as supported by Council when the Planning Proposal to rezone the site was adopted by the City of Parramatta. The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

The variation request also applies the principles established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 and further refined in *Wehbe v Pittwater Council* (2007) NSW LEC 827.

1. *Is the planning controls in question a development standard?*

Clause 4.3 states that the maximum building height control is RL14. This control is a numerical development standard, as defined in Section 4 of the Environmental Planning and Assessment Act 1979 and is therefore capable of being varied under the provisions of Clause 4.6.

2. *What is the underlying object or purpose of the standard?*

The purpose of the standard in accordance with Clause 4.3(1) is:

- (a) *to establish the maximum height of buildings for development on land*
- (b) *to protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
- (c) *to facilitate higher density development in and around commercial centres and major transport routes while minimising impacts on adjacent residential, commercial and open space areas,*
- (d) *to provide for a range of building heights in appropriate locations that provide a high quality urban form.*

3. *Is compliance with the standard consistent with the aims of the policy and does compliance with the standard hinder the object of the Act under s5a(i) and (ii)?*

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards is (considered relevant in the assessment of Clause 4.6 departures):

“To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”

The objects set down in Section 5(a)(i) and (ii) are:

“(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, 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 co-ordination of the orderly and economic use and development of land,

It is considered that a variation to 4.3 of the Parramatta Local Environmental Plan 2011 would not hinder Council’s overall strategic objectives towards the proper management and development of land within the municipality and is therefore consistent with the objectives of the Policy. It is reinforced that the habitable portion of the building complies with the overall height control and there are no resultant impacts to adjoining sites resulting from this variation.

4. *Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?*

It is considered that compliance with the standard contained in 4.3 would be unreasonable and unnecessary in the circumstances of the case given that:

- The proposal is for a Cathedral of grand proportions, that is purpose built and is a unique development proposal, not generally anticipated in the standardised planning controls.
- The variation is not based on, nor seeking, an uplift that would lead to additional development yield on the site. It is a variation founded on the unique nature of the built form, the unique sites location, and the unique design of the proposed Cathedral.
- For this site, the RL14 height limit is in place to protect heritage views between items of heritage in the vicinity of the site. A heritage view corridor is nominated across a small portion of the site (the north east corner of the site). The proposed Cathedral sits outside of the view corridor and there is no intrusion into the view corridor. Accordingly, the intent of the RL14 height limit is met as the proposal does not interrupt or otherwise impact on the heritage view corridor.
- Given the size of the site, there are no overshadowing impacts from the proposal that harm the amenity of any adjoining properties or public spaces.
- The proposal is located within an SP1 – Special Activities: Educational Establishment and Place of Worship zone. The development fulfils the zoning requirements by providing a Place of Worship.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

The unique circumstances of the case that warrant support of the departure are that the variation enables the development to:

- The proposal is for a Cathedral. The Cathedral is a unique proposal for any city. The site's location, at the city edge, and immediately opposite the Parramatta River is of adequate area and appropriate location to allow for the development of a grand Cathedral, with significant proportions, that will contribute to the fabric of built form and spaces in Parramatta CBD and contribute to the culture of Parramatta. The site's location, the site's function and the proposed use, warrants a unique design and a unique planning and urban design outcome.
- The proposal has been located to ensure that the primary purpose of the height control is respected, being the protection and retention of heritage view corridors.
- Uniquely, the purpose of the height breach is to deliver an architectural masterpiece and is not for monetary gain or additional yield or to avoid costs.

5. *Is the objection well founded?*

In summary, it is considered that the objection to the development standard set down in Clause 4.3 is well founded, and compliance with the standard would be unreasonable and unnecessary, as the purpose or objectives of the building height control have been satisfied.

In that decision, it was further noted that there is public benefit in maintaining planning controls and that SEPP 1/Clause 4.6 should not be used in an attempt to effect general planning changes throughout the area.

This variation request does not attempt to affect the planning outcomes for the broader locality, rather it reflects the identified site-specific development constraints and a performance-based design approach in achieving the underlying intent of the controls.

Notwithstanding the departure from the numerical control set down in 4.3 the proposal is generally consistent with the aims of the Parramatta LEP 2011, and the objectives set down in Clause 4.3(1) as addressed previously.

CONCLUSION

Strict compliance with the prescriptive building height requirements is unreasonable and unnecessary in the context of the proposal and its circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The site's use as a Place of Worship has been the subject of a Planning Proposal that was assessed by Parramatta Council and the Department of Planning, placed on public exhibition, endorsed by the elected representatives of Parramatta, and made in

the Government Gazette. Accordingly, the process that led to the lodgement of the Development Application has been one that has identified the site for the specific purpose of a Place of Worship, and the aspirations for a Cathedral building of grand proportions has been accepted.

- The proposal is for a grand Cathedral, that will be an architectural masterpiece, that will contribute to the built form of the city.
- The scale of the building is commensurate with its purpose and will provide a focal point and reference point for the general public.
- The very purpose of the building and intent of the design will be eroded if the proposal complied with the height limit and became a diminutive building on the site, lower than the existing building on the site, and out of scale with its location and purpose.

The proposal will not have any adverse effect on the surrounding locality and is consistent with the future character envisioned for the subject site. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

The proposed Greek Cathedral is undoubtedly a unique development proposal and thus should be considered in that context. An Urban Design Analysis is submitted with this development application demonstrating the unique built form and related historical information about the Cathedral and the chosen architectural style.

The recent decision by Chief Judge Preston in a judgement dated 14 August 2018 in the matter of Initial Action Pty Ltd v Woollahra Council confirmed that the absence of impact was a suitable means of establishing grounds for a departure and confirmed that there is no requirement for a development that breaches a numerical standard to achieve a 'better outcome'.

In that case it was found that the Commissioner applied the wrong test by requiring that the development, which contravened the height development standard, result in a 'better planning outcome for the site' relative to a development that complies with the height standard. Clause 4.6 does not directly or indirectly establish this test.

Therefore, it is not necessary to demonstrate that the development is a 'better outcome'

The Parramatta LEP 2011 permits architectural roof features when it is demonstrated that the proposed features meet the requirements of an architectural roof feature, there is no "test of dominance" included in the architectural roof feature provisions of the LEP.