

## Clause 4.6 Exception to Development

### Standard (Issue 2) – Floor Space Ratio - Merrylands East Neighbourhood Centre

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Job Name	Merrylands East Neighbourhood Centre		
Job Number	18-029		
Client	Green Dior Holdings Pty Ltd		
Quality Management			
	Name	Date	Signature
Issue 1 Prepared by	NC	14 August 2020	NC
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This report is current at the date of the development application only.

This report is to be read in its entirety and in association with other documentation submitted as part of the Development Application.

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## 1. Introduction

Knight Frank Town Planning have been commissioned by Green Dior Pty Ltd to prepare a request pursuant to clause 4.6 of the *Parramatta Local Environmental Plan 2011* (the LEP) in respect of a Development Application seeking development consent for a proposed Mixed-Use Development on the former John Cootes Furniture site located over the following properties:

- ◆ 246 Woodville Road;
- ◆ 248-260 Woodville Road (part of former JCF site);
- ◆ 2 and 4 Lansdowne Street;
- ◆ 8 Lansdowne Street (part of former JCF site);
- ◆ 8A, 10, 12 and 14 Lansdowne Street;
- ◆ 16 Lansdowne Street (part of former JCF site); and
- ◆ 19 Highland Street (part of former JCF site).



**Figure 1 - Site Location Aerial Photograph (Marchese Partners)**

Details of the mixed use development proposal that are subject of this Development Application are shown on the accompanying Architectural Drawings package prepared by Marchese Architects, Job No.18109 Revision C, and include the following components:

- ◆ Two (2) basement floors comprising 930 car parking spaces, 56 motorcycle spaces and 300 bicycle spaces;
- ◆ Single level 10,055m<sup>2</sup> retail shopping centre (GFA) that comprises a supermarket and specialty shops;
- ◆ Shop-top housing/apartment building comprising 413 dwellings, inclusive of 42 adaptable dwellings and 8 affordable housing dwellings;
- ◆ A landscaped podium area and rooftop communal landscaped areas;
- ◆ Hotel/Serviced Apartments with 95 rooms over four (4) floors, 5,784m<sup>2</sup> in floor area, with associated hotel facilities, a swimming pool and double height lobby; and

- ◆ Childcare centre for up to 100 children measuring 816m<sup>2</sup> (GFA) plus outdoor space in accordance with regulations;

With regard to the building form, the development comprises a single storey shopping centre as the podium with 5 buildings measuring between 4 to 8 storeys above ground level (5 to 9 storeys including the podium). Two basement levels are proposed which primarily contain car parking for the development.

The scheme that has been prepared results in a numerical non-compliance with a development standard within the Parramatta LEP 2011 (the LEP). Consistent with the terms set out in clause 4.6 of the LEP, a variation to the floor space ratio development standard is being sought.

Clause 4.6 establishes preconditions that a Consent Authority must be satisfied of before it can grant consent to a development that is non-complaint with a development standard. This written statement has been prepared in accordance with the relevant principles established in the following NSW Land and Environment Court judgments:

- ◆ *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- ◆ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- ◆ *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- ◆ *Moskovich v Waverley Council* [2016] NSWLEC 2015; and
- ◆ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

## 2. The Proposed Variation

An exception is being sought under clause 4.6 of the Parramatta LEP 2011 from the need to strictly comply with the development standard clause 4.4 Floor space ratio, which reads as follows:

### 4.4 Floor space ratio

(1) *The objectives of this clause are as follows—*

- (a) *to regulate density of development and generation of vehicular and pedestrian traffic,*
- (b) *to provide a transition in built form and land use intensity within the area covered by this Plan,*
- (c) *to require the bulk and scale of future buildings to have regard to heritage sites and their settings,*
- (d) *to reinforce and respect the existing character and scale of low density residential areas.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the **Floor Space Ratio Map**.*

(2A) *Despite subclause (2), land identified with a thick blue line and labelled "Area 1" on the **Floor Space Ratio Map** is not to exceed the relevant floor space ratio determined in accordance with the Table to this clause.*

<b>Site area</b>	<b>Maximum floor space ratio</b>
$\leq 950$ square metres	1.5:1
$> 950 \leq 2,100$ square metres	3.5:1
$> 2,100 \leq 3,200$ square metres	4.5:1
$> 3,200$ square metres	6:1

The Floor Space Ratio Maps – Sheet FSR\_006 and Sheet FSR\_011 under Parramatta LEP 2011 identifies the subject site as having a maximum floor space ratio of 2:1, detailed as 'T1' on the associated maps – see **Figures 2 and 3**.

Architectural drawings prepared by Marchese Partners International Pty Ltd display the proposed development and include specific drawings that indicate the gross floor area and resulting floor space ratio of the development. A total gross floor area of 55,167.17m<sup>2</sup> is proposed equating to an FSR of 2.02:1 which exceeds the permitted gross floor area by 503.17m<sup>2</sup> or 0.92%.



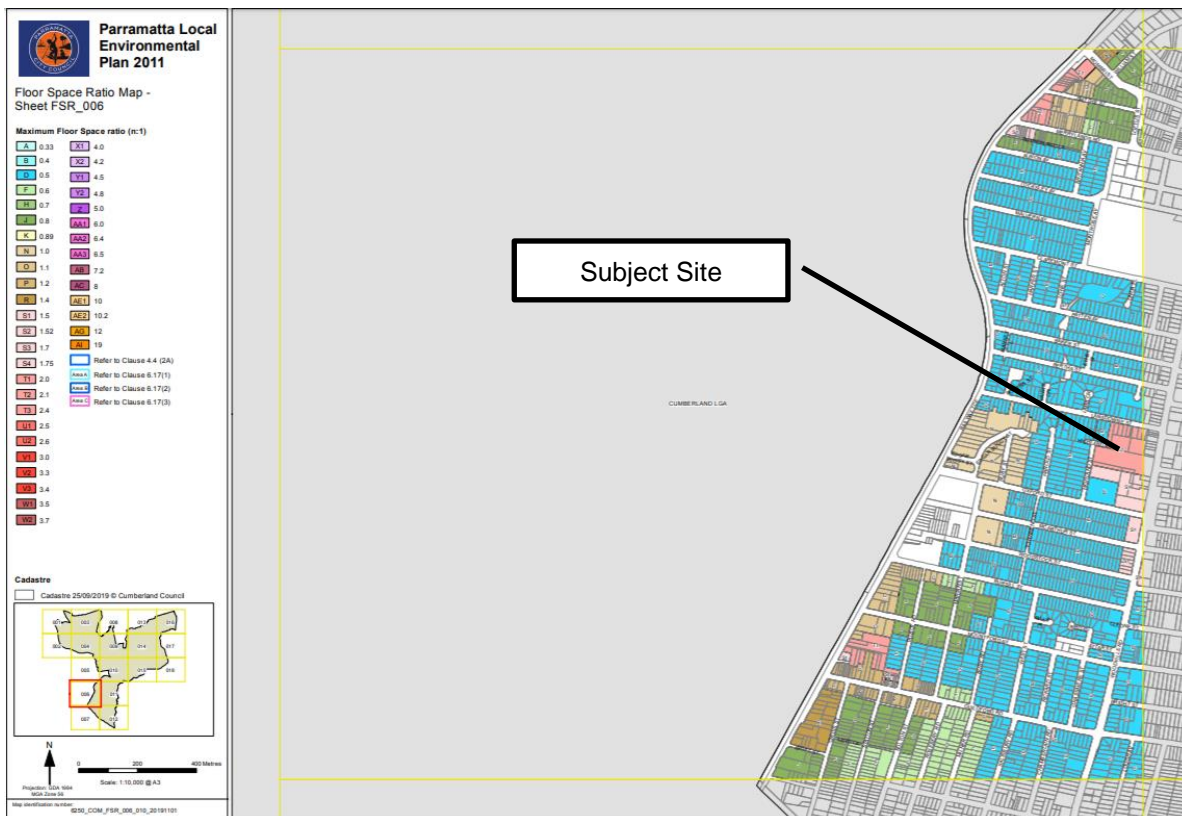


Figure 2 - Floor Space Ratio Map (FSR\_006)

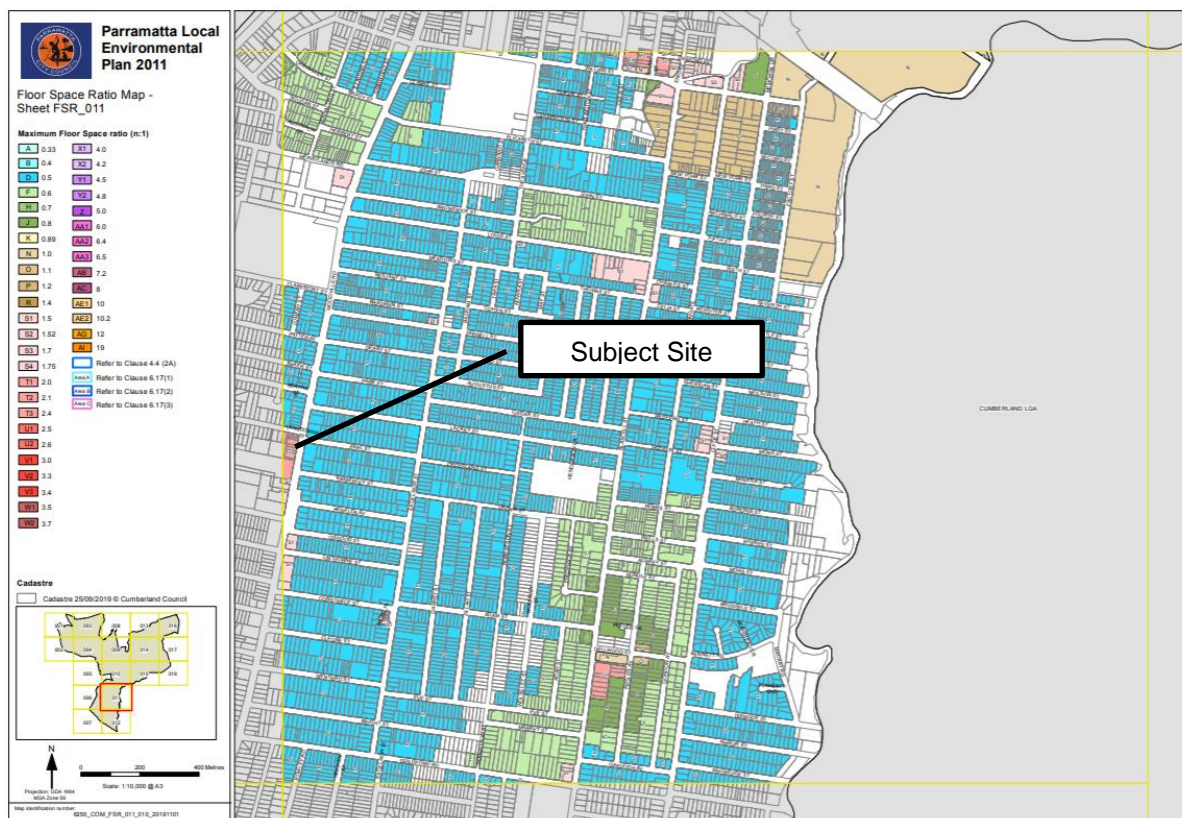


Figure 3 - Floor Space Ratio Map (FSR\_011)

### **Draft Cumberland Local Environmental Plan – Proposed Controls**

Council has prepared a Planning Proposal for the new Cumberland Local Environmental Plan. The Planning Proposal describes how the provisions of the Auburn, Parramatta and Holroyd Local Environmental Plans will be consolidated to provide a single planning framework for all of Cumberland City. At the time of writing the Planning Proposal has been publicly exhibited and was reported to Council. The planning proposal was endorsed by Council at its Meeting of 15 July 2020 and formally provided to the Department of Planning, Industry and Environment (DPIE) in August 2020. The new Cumberland LEP is expected to be finalised by the end of the 20/21 financial year.

Under the draft planning controls the subject site is to have a split zoning. The land that is subject of the mixed-use development will be zoned B2 Local Centre. The proposed public park will be zoned RE1 Public Recreation. Knight Frank Town Planning prepared a submission to Council, dated 8 May 2020, in response to the exhibition of the Draft Cumberland Local Environmental Plan (CS-202). In the submission it was noted that the area comprising the RE1 zone is greater than that required to satisfy the dimensions for a 2,000m<sup>2</sup> park under the executed Voluntary Planning Agreement and the area specific Development Control Plan planning controls. It was clarified by Council in a response dated 26 May 2020 that it was the intention of Council that the RE1 zone apply to the park only.

In this same submission to Council, it was noted that the inclusion of the RE1 zoned land would have the unintended consequence of reducing the gross floor area of a development in the B2 zone. The mixed-use development would be prohibited within the RE1 zone and therefore land within that zone would not contribute towards the 'site area' in considering the permitted floor space ratio of a development. Council has agreed with the submission in this regard and has recommended that this be addressed through the increase in the floor space ratio control to 2.2:1 as it applies to the B2 zone. Therefore, the Draft LEP as endorsed by Council and provided to the DPIE for finalisation, will ensure that the development would no longer exceed the floor space ratio control, rather it would be compliant with a maximum floor space ratio of 2.18:1 (with a permitted 2.2:1) based on a reduced site area of 25,332m<sup>2</sup>.

### **3. Exception to Development Standard**

#### **3.1 Subclause 4.6(1) – Objectives**

Clause 4.6 Exceptions to Development Standards of the *Parramatta Local Environmental Plan 2011* (LEP) permits Council the flexibility to grant consent where a development exceeds a development standard of the LEP. The objective of clause 4.6 is to provide flexibility in applying certain development standards to development to achieve a better town planning outcome than would otherwise occur through strict compliance to the development standard.

Clause 4.6 of the LEP sets out the objectives of the clause:

*(1) The objectives of this clause are as follows—*

*(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.*

In the circumstance of the case as set out in this submission, it is appropriate to apply a degree of flexibility in considering the development standard. The proposed development would result in an exceedance of the floor space ratio of 503.17m<sup>2</sup> or 0.92%. This is a minor variation to the development standard for a development consistent with the future desired character of the area and will not result in significant adverse effects upon adjoining development.

It is proposed to redevelop the majority of the 'key site' as indicated within Section 4.1 Town and Neighbourhood Centres of the Parramatta DCP 2011 (Merrylands East Neighbourhood Centre Precinct) to provide for a much needed neighbourhood centre within Merrylands East. This will provide a variety of compatible land uses that satisfies the day to day needs of residents and contributes a mix of housing typologies which are able to respond to changing needs and demographics.

It is appropriate to apply a degree of flexibility as the zoning and FSR development standard applying to the site is being repealed and replaced with a new zoning and FSR standard in the Draft Cumberland LEP, which is certain and imminent, and for which the proposed development complies.

As set out within this written statement the development achieves a better town planning outcome than would otherwise occur through strict compliance with the development standard.

#### **3.2 Subclause 4.6(2) – Exclusions from the Operation of Clause 4.6**

Subclause 4.6(2) provides that;

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.4 Floor space ratio is not expressly excluded from the operation of clause 4.6. Therefore, consent may be granted under the operation of the clause.

#### **3.3 Subclause 4.6(3) – Written Request**

Subclause 4.6(3) establishes that consent must not be granted by Council unless it has considered a written request that seeks to justify the contravention of the development standard and demonstrating certain matters:

- (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.

The proposed development is non-complaint with the clause 4.4 floor space ratio development standard. This submission constitutes a written statement for Council’s consideration.

Strict compliance with the numerical development standards is considered to be unreasonable and unnecessary in the circumstances of the case under clause 4.6(3)(a) and that there exist sufficient environmental planning grounds to justify the departure from the development standard consistent with clause 4.6(3)(b).

**Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**

Clause 4.6(3)(a) of the LEP provides that a written request must demonstrate that compliance with the development standard is ‘unreasonable or unnecessary in the circumstances of the case’.

Compliance with the FSR development standard in the Parramatta LEP is unreasonable and unnecessary as the zoning and FSR standard applying to the site is being repealed and replaced with a new zoning and FSR standard in the Draft Cumberland LEP which is certain and imminent and for which the proposed development complies. The proposed FSR complies with the 2.2:1 FSR standard in the Draft Cumberland LEP, and it is therefore unreasonable and unnecessary to comply with the 2:1 FSR in the Parramatta LEP. The proposed development is also consistent with the objectives of the FSR standards.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of that policy. The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in any one of the following five ways outlined in *Wehbe*.

**Table 1 - Wehbe v Pittwater Council, Five Methods**

The Five Methods	
1. <i>The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)</i>	<p>As detailed within section 3.4 of this statement the proposed development achieves the objectives of the development standard being varied despite the non-compliance with the floor space ratio standard.</p> <p>The proposed development will result in a new neighbourhood centre within an area that is undergoing transition in character and building scale. Due regard has been given to the established low-density residential areas and Granville South Public School in the proposed design. There is no significant impact upon their amenity as it relates to solar access, visual impacts or traffic impacts.</p> <p>With regard to the distribution of the built form and density throughout the site the proposal is generally consistent with the area specific planning controls provided for under Section 4.1 Town and Neighbourhood Centres of the Parramatta DCP 2011 (Merrylands East Neighbourhood Centre Precinct).</p>



The Five Methods	
	<p>The density remains appropriate for the area and will facilitate a mix of compatible land uses that provide for the day to day needs of existing and future residents.</p> <p>The proposed gross floor area controls under the endorsed Draft Cumberland Local Environmental Plan would result in a compliant development. Irrespective, the proposed variation is numerically minor and will have no noticeable impact on the resulting bulk and scale as viewed from the public domain or adjoining properties.</p>
2. <i>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).</i>	This method is not relied upon for determining whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
3. <i>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).</i>	This method is not relevant to the development standard being varied and is not relied upon for determining whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
4. <i>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 (Fourth Method)</i>	The FSR standard in Parramatta LEP is being repealed and replaced with a new FSR standard in the Draft Cumberland LEP which is imminent. The proposed development complies with the FSR in the Draft Cumberland LEP. Although not abandoned by actions on other DAs, the FSR standard in Parramatta LEP is being repealed.
5. <i>The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).</i>	The B4 zoning and associated 2:1 FSR standard applying to the site under the Parramatta LEP are being repealed and being amended to a split B2 Local Centre and RE1 Public Recreation zoning and 2.2:1 FSR standard under the Draft Cumberland LEP. The proposed development complies with the zoning and FSR standard in the Draft Cumberland LEP. Although the current B4 zoning is not inappropriate, the B4 zoning and the associated 2:1 FSR standard in the Parramatta LEP are being repealed.

As demonstrated in **Table 1** and elsewhere in this report compliance with the development standard is unreasonable and unnecessary in the circumstances of the case consistent with the test established in *Wehbe v Pittwater* [2007] NSW LEC 827.

**Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

There are unique circumstances to this case and sufficient environmental planning grounds specific to the development and subject site which warrant support, including:

- The development is closely aligned with Council's strategic direction for the proposed Merrylands East Neighbourhood Centre Precinct. The built form and distribution of density throughout the development site is generally consistent with the area specific planning controls under the Parramatta DCP 2011.

- The development has been well designed compatible with the character of the area. Significant improvements are proposed to the public domain, comprising a colonnade for outdoor dining, a 2,000m<sup>2</sup> public park and a high degree of pedestrian connectivity throughout the site and to adjoining areas.
- Built form has been appropriately distributed throughout the site with the greater bulk and scale adjoining Woodville Road being the least sensitive to greater building height and form. The development transitions in height and scale to low density residential development areas along Lansdowne St and to the west of the site and Granville South Public School to the south. The distribution of gross floor area away from the more sensitive fringes will improve their amenity outcomes with regard to visual impacts, solar access and privacy.
- The variation to the development standard will not result in any significant adverse visual or privacy impacts upon adjoining properties comprising the Granville South Public School and adjoining low density residential areas. The design appropriately responds with upper level setbacks for Building B and screening in the form of louvres for balconies facing south.
- Shadow diagrams prepared by Marchese Partners detail the potential for overshadowing generated by the proposed development. The shadow diagrams show there will be no overshadowing of the adjoining residential areas. While there will be overshadowing of the Granville South Public School, with the greatest extent between 9am-10am (measured on 21 June), the overshadowing is minor in the context of the size of the school landholding and the areas overshadowed. Solar access to sporting fields and courts will be retained at critical times.
- The variation will not result in noticeable bulk, height or scale, as viewed from the public domain and neighbouring properties.
- The development has been appropriately designed with regard to an adjoining listed heritage item. Supporting the application is a Heritage Impact Assessment prepared by Urbis which has considered the potential impact of the development upon the significance of the listed heritage item. Noting in their conclusion and recommendations regarding the relationship of the proposed development with the heritage item *"The main school building is physically and visually distanced from the subject site in views along Woodville Road...the subject development will form part of a backdrop of medium density contemporary development"*. The report concludes that *"The subject proposal is supported on heritage grounds and the development application is therefore recommended to the consent authority for approval"*.
- The development adjoins Woodville Road which provides regular service from the site to the Parramatta CBD and adjoining suburbs. The density of development, both residential and commercial, is appropriate in a consolidated location in close proximity to established public transport infrastructure.
- The proposed development will contribute to housing diversity within the area with 8 affordable housing units that will be dedicated to Council and 10% of adaptable housing units which will cater for changing demographics and facilitate ageing in place.

For those reasons we consider there to be sufficient environmental planning grounds consistent with clause 4.6(3)(b) to warrant support from Council.

### **3.4 Subclause 4.6(4) – Written Request to the Satisfaction of Council**

Subclause 4.6(4)(a) and (b) notes that development consent must not be granted for development that departs from a development standard unless:

*(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 Secretary has been obtained.*

This submission constitutes a written statement for Council's consideration. The development is considered to be in the public interest in accordance with clause 4.6(4)(a)(ii) given that the proposal is consistent with the objectives of the development standard being varied and the objectives of the land use zone in which it is proposed.

***Clause 4.6(4)(a)(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,***

In determining whether the proposed development is in the public interest, despite the variation being sought to a development standard, it is necessary to consider the objectives of the standard that is being varied. **Table 2** provides an assessment against each of the objectives of clause 4.4 Floor Space Ratio. **Table 3** provides an assessment against each of the objectives of the draft clause 4.4 Floor Space Ratio development standard pursuant to the Draft Cumberland LEP.

**Table 2 - Clause 4.4 FSR Objectives (Parramatta LEP 2011)**

<b>Clause 4.4 Floor Space Ratio</b>	
<b>Objectives</b>	<b>Response</b>
<i>(a) to regulate density of development and generation of vehicular and pedestrian traffic,</i>	<p>The proposed variation represents a numerical exceedance of 503.17m<sup>2</sup> or 0.92%, which is a nominal variation from Council's development standard that does not result in a significant increase in the density of development within the zone. The distribution of development throughout the site remains generally consistent with the area specific planning controls for the Merrylands East Neighbourhood Centre Precinct.</p> <p>Supporting this application is a Transport Impact Assessment prepared by GTA Consultants that considers the impacts associated with the development on the local and state road network. The proposed development does not result in significant impacts on the road network. New roads are proposed through the development to facilitate access to and within the site, access points proposed are generally consistent with the area specific planning controls for the Merrylands East Neighborhood Centre as per the Parramatta DCP 2011.</p> <p>Under the Draft Cumberland Local Environmental Plan, which has been endorsed by Council and referred to the DPIE for finalisation, the site is proposed to have a floor space ratio control of 2.2:1, for which the proposed development would be compliant.</p>
<i>(b) to provide a transition in built form and land use intensity within the area covered by this Plan,</i>	<p>The distribution of built form is detailed within the area specific Development Control Plan which provides indicative building form, building envelopes and number of storeys throughout the site with an emphasis on bulk and scale fronting Woodville Road, transitioning appropriately in scale towards the public school to the south and low density residential development along Lansdowne St and to the west.</p> <p>The development is consistent with the number of storeys for a building adjoining Woodville Road, transitioning to a five (5) storey building at the north-western corner of the site and six (6) storey building at the south-western corner. This is entirely appropriate with a greater built form adjoining Woodville Road, transitioning to the more sensitive fringes with established low density residential development generally to the north and west of the development site and the Granville South Public School to the south. This transition is in addition to a generous separation between the development and adjoining land uses created in</p>

Clause 4.4 Floor Space Ratio	
Objectives	Response
	<p>part by the existing and proposed roads and deep soil zones which form the perimeter of the site</p> <p>Early community consultation on land use planning for the Woodville Road Corridor was recently undertaken by Council in November/December 2020. For land on the opposite side of Lansdowne Street from the development site, an increase to 'high density' with building height of 4-5 storeys is proposed as per the Proposed Planning Framework. This is compatible with the desired character and built scale of Merrylands East.</p>
<i>(c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,</i>	<p>Located to the south of the development site is a listed local heritage item under Parramatta LEP 2011. Supporting this application is a Heritage Impact Assessment prepared by Urbis which has considered the proposed development and the potential impact on the significance of the listed item.</p> <p>A substantial separation between the heritage item and the development is achieved. The materiality of the heritage item has been picked up in the podium of the proposed building through the use of masonry elements.</p> <p>Urbis note in their report that <i>"The main school building is physically and visually distanced from the subject site in views along Woodville Road...the subject development will form part of a backdrop of medium density contemporary development"</i></p> <p>With regard to aspects of the proposed development that could detrimentally impact on the heritage significance of the listed item the report notes that <i>"There are no aspects of the development that are considered to detrimentally impact on the proximate heritage item. The proposed new development will be larger in scale than surrounding development...however impacts of scale are considered to have been mitigated by the setbacks to the shared boundary, proposed site planning (specifically the roadways proposed at the site boundaries and the proposed site landscaping) that will assist to create a sense of visual separation and define the curtilage of the heritage item."</i> (p.31).</p> <p>The report concludes that the subject proposed is supported on heritage grounds.</p>
<i>(d) to reinforce and respect the existing character and scale of low density residential areas.</i>	<p>Built form has been appropriately distributed throughout the site generally consistent with the area specific planning controls within the Parramatta DCP 2011. Density has been focused along Woodville Road having the greater intensity of land uses, which then transitions in height and scale to the more sensitive fringes which contains low density residential development and the public school to the south. The development has been appropriately articulated with upper level setbacks and a defined bottom, middle and top, providing a consistent street level wall height.</p> <p>The development is for the creation of a new neighbourhood centre within an area that is undergoing transition in character and building scale. Appropriate regard has been given to the existing character and scale of residential areas and the future desired character of the area as set out in the Woodville Road Corridor Strategy.</p>

**Table 3 - Clause 4.4 FSR Objectives (Draft Cumberland LEP)**

<b>Clause 4.4 Floor Space Ratio</b>	
<b>Objectives</b>	<b>Response</b>
a) <i>To establish a maximum floor space ratio to enable appropriate development to be achieved</i>	Under the Draft Cumberland Local Environmental Plan, which has been endorsed by Council and is understood to be certain and imminent, the site will have a floor space ratio control of 2.2:1, which the proposed development would be compliant with. Compliance with the development standard as drafted by Council will result in an appropriate development to be achieved. The distribution of development throughout the site is otherwise proposed generally consistent with the area specific planning controls for the Merrylands East Neighbourhood Centre Precinct.
b) <i>To ensure that development intensity reflects its locality.</i>	<p>Built form has been appropriately distributed throughout the site generally consistent with the area specific planning controls within the Parramatta DCP 2011 and Draft Cumberland DCP. Density has been focused along Woodville Road having the greater intensity of land uses, which then transitions in height and scale to the more sensitive fringes which contains low density residential development and the public school to the south. The development has been appropriately articulated with upper level setbacks and a defined bottom, middle and top, providing a consistent street level wall height.</p> <p>The development is for the creation of a new neighbourhood centre within an area that is undergoing transition in character and building scale. Appropriate regard has been given to the existing character and scale of residential areas and the future desired character of the area as set out in the Woodville Road Corridor Strategy.</p>

In establishing whether the proposed development is in the public interest, despite the variation being sought to a development standard, it is necessary to consider the objectives of the land use zone. **Table 4** provides an assessment against each of the objectives of the B4 Mixed Use zone.

**Table 4 - B4 Mixed Use zone, Objectives**

<b>B4 Mixed Use zone</b>	
<b>Objectives</b>	<b>Response</b>
<i>To provide a mixture of compatible land uses.</i>	The development proposes a mix of appropriate land uses comprising residential dwellings, a supermarket, specialty retail shops, child-care centre and hotel. The development has been designed to allow for land uses to operate harmoniously. Separate lift access has been provided for the individual land uses to ensure user convenience. A high degree of connectivity is provided between the car parking areas and the individual land uses with residential uses and non-residential land uses separated.
<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>	Supporting this application is a Transport Impact Assessment prepared by GTA Consultants which has considered among other matters the level of service provided to the development under the current public transport infrastructure. Currently public buses provide regular service from the site to the Parramatta CBD and surrounding suburbs. Suitable land uses are proposed in a consolidated location within close proximity to established public transport infrastructure.
<i>To encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i>	Located on the ground floor of the development are a range of commercial uses that will contribute towards a vibrant public domain. In the south-west corner of the site is a public park which provides pedestrian linkages with ground floor tenancies earmarked as 'eat-street'. It is intended that cafés and restaurants with outdoor dining will occupy this space consistent with Council's vision for the site.



B4 Mixed Use zone	
Objectives	Response
	<p>Retail tenancies continue along the western frontage eventually meeting with the proposed childcare centre which forms the north-western corner of the development.</p> <p>The neighbourhood centre is highly walkable with pedestrian footpaths providing a perimeter around and within the site. The public park will provide existing and future residents and workers with an open space to gather and socialise. Communal open space is provided for on the podium along with on the rooftop of Buildings B, C and E allowing for more intimate gatherings. Facilities are proposed as part of the hotel development and will be shared between visitors of the hotel and residents.</p> <p>A range of renewable energy measures are to be implemented including a solar panel array on buildings A, B and D. This will complement water saving measures proposed as detailed within the supporting ESD Report by BCA Energy.</p>
<i>To create opportunities to improve the public domain and pedestrian links.</i>	The majority of the site is currently vacant with the now disused John Cootes furniture warehouse. The development provides the opportunity to deliver a much needed neighbourhood centre that provides high quality open spaces and public domain. Proposed consistent with Council's area specific planning controls is a public park measuring 2,000m <sup>2</sup> , ground level shops which will form an 'eat street' with a sheltered colonnade allowing for high amenity outdoor dining. Landscaping is proposed throughout the site which will allow for deep soil planting opportunities. In particular transitioning to adjoining low density residential land uses, the Public School and along Woodville Road, which will aid in 'greening' and softening this frontage.
<i>To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i>	Supporting this application is an Economic Impact Assessment prepared by HillPDA which has considered the demand for commercial floor space within Merrylands East and the potential impact delivering that floorspace on other centres within the main trade area. The quantum of commercial floor space is consistent with the level of demand in the local area and will not detract from B3 Commercial Core zones within the Cumberland LGA.
<i>To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i>	The Parramatta City Centre is no longer located within the Cumberland LGA, irrespective of its location the proposed development will have no material impact on the Parramatta City Centre.

The proposed development achieves the objectives of the development standard being varied and the objectives of the zone in which it is proposed, despite the non-compliance with the clause 4.4 Floor space ratio development standard. The proposed development remains in the public interest despite the variation being sought.

### 3.5 Subclause 4.6(5) – Planning Secretary Concurrence

Under subclause 4.6(5), in deciding whether to grant concurrence, the Planning Secretary must consider the following matters:

(5) *In deciding whether to grant concurrence, 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.*

Pursuant to clause 64 of the Environmental Planning and Assessment Regulation 2000, consent authorities are notified by Planning System Circular PS18-003 dated 21 February 2018 that a Council or the Sydney district and regional planning panels may assume the Secretary's concurrence. The Secretary's concurrence may only be assumed where the variation to a numerical standard is less than 10%, or where the variation is to a non-numerical standard.

With regard to the proposed variation to the maximum floor space ratio development control an FSR of 2:1 (gross floor area of 54,664m<sup>2</sup>) is permitted within the site whereas the development proposes an FSR of 2:02:1 (gross floor area of 55,167.17m<sup>2</sup>). This constitutes a numerical variation of 503.17m<sup>2</sup> or 0.92% of the permitted gross floor area under the current planning controls.

#### **4. Conclusion**

The proposed development results in a numerical non-compliance with a development standard within the Parramatta LEP 2011 (the LEP). Consistent with the terms set out in clause 4.6 of the LEP, a relatively minor variation to the floor space ratio development standard is being sought. Under Council's endorsed Draft Cumberland Local Environmental Plan, which is certain and imminent, the proposed development would be compliant with the proposed floor space ratio development standard.

The proposed development will deliver a much-needed neighbourhood centre containing a range of compatible land uses that will satisfy the needs of existing and future residents. The design is compatible with the future desired character of the area and will provide for a high-quality public domain. The development is consistent with the objectives of the zone and the objectives of the FSR standard being varied.

The proposed development will not result in any unreasonable or significant environmental, social or economic impacts despite the variation proposed. Compliance in this instance is unreasonable and unnecessary and would result in a lesser planning outcome. The variation to the development standard is well founded and satisfies the public interest.