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**URBIS**

# **CLAUSE 4.6 VARIATION REQUEST (FLOOR SPACE RATIO)**

Proposed Mixed Use  
Development

Prepared for  
**COTTONWOOD DEVELOPMENT PTY LTD**  
19 December 2024

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Project Code                P0046444  
Report Number             FINAL



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The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

Title: Sacred River Dreaming  
Artist Hayley Pigram  
Darug Nation  
Sydney, NSW

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# 1. INTRODUCTION

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Cottonwood Development Pty Ltd (**the Applicant**) and accompanies a Development Application (**DA**) – LDA2024/0158 – for the proposed mixed-use development at 15-21 Cottonwood Crescent, Macquarie Park (**the site**).

The request seeks an exception from the maximum Floor Space Ratio (**FSR**) prescribed for the site pursuant to the provisions under Clause 4.4 of the *Ryde Local Environmental Plan 2014 (RLEP2014)*. The request is made pursuant to Clause 4.6 of the RLEP 2014 and should be read in conjunction with the amended DA package for which this request supports.

The following sections of this request include:

- **Section 2:** A description of the site and brief overview of the proposed development (as amended).
- **Section 3:** Identification of the relevant environmental planning instrument and the relevant development standard which is proposed to be varied, including the extent of contravention.
- **Section 4:** Justification for the proposed variation including assessment of the variation in accordance with Clause 4.6 of the LEP.
- **Section 5:** Summary and conclusion.

## 1.1. PROJECT BACKGROUND

On 5 August 2024, the DA was formally lodged with the City of Ryde Council for a proposed mixed-use development at the site. On 25 September 2024, Council issued a request for information (**RFI**) in relation to various elements of the proposed development.

Of relevance to this variation request, the proposed development previously included a built form strategy that included provision for breezeways on the upper floors which were designed to accommodate an innovative solution and promote improvements in achieving natural ventilation targets in accordance with the Apartment Design Guide (**ADG**).

Following ongoing engagement with Council, a decision has been made to install operable louvres, meaning their effective enclosure in certain climatic conditions. This results in the breezeways being treated as GFA and accordingly leads to non-compliance in relation to the proposed FSR across the site.

The ensuing sections of this Clause 4.6 Variation Request successfully demonstrate that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that given it is essential a “technical” non-compliance there are sufficient environmental planning grounds and merit to justify contravening the development standard.

## 2. SITE AND PROPOSED DEVELOPMENT

### 2.1. SITE DESCRIPTION

The site consists of four (4) properties at 15-21 Cottonwood Crescent, Macquarie Park. The area and associated legal lot entity for each property within the site has been identified in **Table 2**. An aerial of the site is provided at **Figure 2** (overleaf).

The site benefits from two (2) street frontages to Waterloo Road (north) and Cottonwood Crescent (east), in addition to a high-amenity interface with Elouera Reserve (west). The south-western site boundary adjoins two (2) residential properties at 13 Cottonwood Crescent and 12-14 Lachlan Avenue. The approximate length of each site boundary is listed below. The site is currently connected to all necessary services including water, gas, electricity, communications and sewage.

- **North-east:** 52.45m to Waterloo Road.
- **South-east:** 97.35m to Cottonwood Crescent.
- **South-west:** 50.6m to 13 Cottonwood Crescent and 12-14 Lachlan Avenue.
- **North-west:** 100.9m to Elouera Reserve.

Table 1 Legal Site Description

Address	Legal Lot Entity	Area
15 Cottonwood Crescent, Macquarie Park	SP8144	1,284m <sup>2</sup>
17 Cottonwood Crescent, Macquarie Park	SP7630	1,284m <sup>2</sup>
19 Cottonwood Crescent, Macquarie Park	SP7892	1,284m <sup>2</sup>
21 Cottonwood Crescent, Macquarie Park	SP7984	1,278m <sup>2</sup>
<b>Total Site Area</b>		<b>5,130m<sup>2</sup></b>

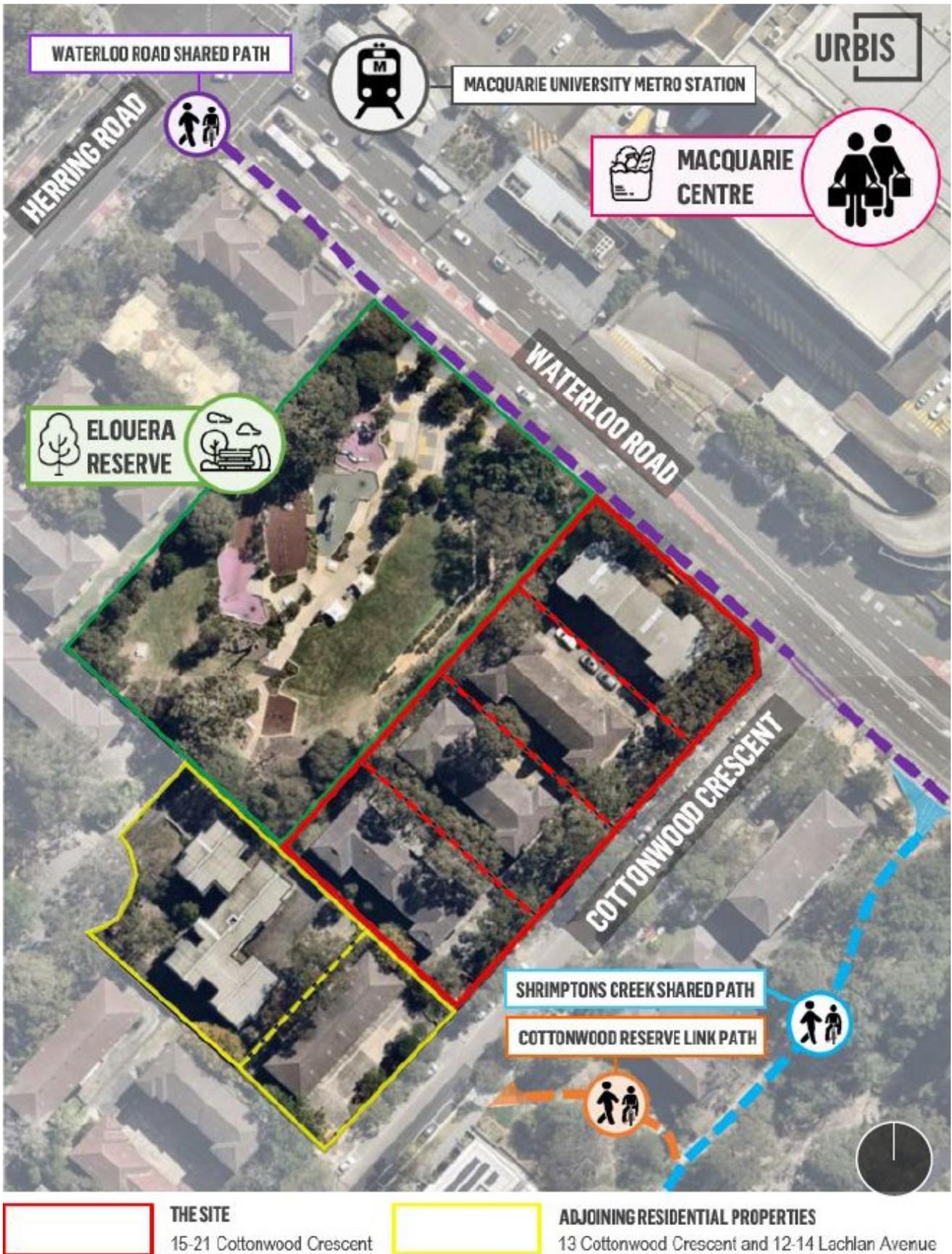
#### 2.1.1. Existing Development

Each property within the site accommodates a stand-alone four-storey residential flat building. Existing development at the site is summarised in **Table 3**. and is shown at **Figure 2** and **Figure 3** (overleaf).

Table 2 Description of Existing Development

Address	Existing Development	No. Units
15 Cottonwood Crescent, Macquarie Park	Four-storey residential flat building. Name unknown. Primary frontage and vehicle access at Cottonwood Crescent.	15
17 Cottonwood Crescent, Macquarie Park	Four-storey residential flat building known as 'Darvall Court'. Primary frontage and vehicle access at Cottonwood Crescent.	15
19 Cottonwood Crescent, Macquarie Park	Four-storey residential flat building known as 'Oxley'. Primary frontage and vehicle access at Cottonwood Crescent.	15
21 Cottonwood Crescent, Macquarie Park	Four-storey residential flat building. Name unknown. Primary frontage to Waterloo Road. Vehicle access at Cottonwood Crescent.	15

Figure 1 - Site Aerial



Source: Urbis (excl. Nearmap Aerial Underlay)

## 2.1.2. Site Topography

The maximum elevation across the site is approximately RL 50m AHD, located in the western portion of the site at the top of the existing retaining wall on 15 Cottonwood Crescent. Surface elevations on the site generally fall by 4m towards the north-east and south-west, with several steps in elevation due to the existing retaining structures at the site.

The sloped gradient of the site is relevant to the assessment of the proposed height variation (refer to **Section 6.2.1**), particularly in relation to the concentration of additional building mass towards the rear of the site where ground excavations will be undertaken to accommodate the basement and building foundations for the Cottonwood Tower.

## 2.2. PROPOSED DEVELOPMENT

The proposed development includes:

- Demolition of existing residential flat buildings at the site.
- Bulk earthworks, including ground excavations to accommodate building foundations and basement car parking facilities.
- Construction of two (2) residential towers above a single mixed-use podium with a total Gross Floor Area (GFA) of 24,323m<sup>2</sup>, including:
  - Cottonwood Tower: 20 storeys.
    - GFA of 12,060m<sup>2</sup>.
    - 124 residential apartments.
  - Waterloo Tower: 19 storeys.
    - GFA of 12,263m<sup>2</sup> (including 263m<sup>2</sup> of retail GFA).
    - 131 residential apartments.
- Vehicle access to the proposed basement car parking facilities from Cottonwood Crescent.
- A maximum of 288 car parking spaces.
- Landscaping and vegetation management, including: Total landscaping: 2,442m<sup>2</sup>, accounting for 48% of the total site area.
  - Tree canopy coverage: 30% of the total site area
  - Trees removed: 40.
  - Trees proposed: 54 (net +14).
  - Minor public domain works, including landscaping and surface embellishments along the Waterloo Road frontage.

# 3. PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

## 3.1. ENVIRONMENTAL PLANNING INSTRUMENT

This request seeks a variation to the FSR development standard prescribed under Clause 4.4 of the RLEP2014. This variation request is made pursuant to Clause 4.6 of the RLEP2014.

## 3.2. SITE ZONING

The site is zoned MU1 Mixed Use pursuant to the zoning provisions under the RLEP2014 (refer to **Figure 2** below).

Figure 2 - Applicable Land Use Zone



Source: NSW Planning Portal Spatial Viewer (adapted by Urbis)

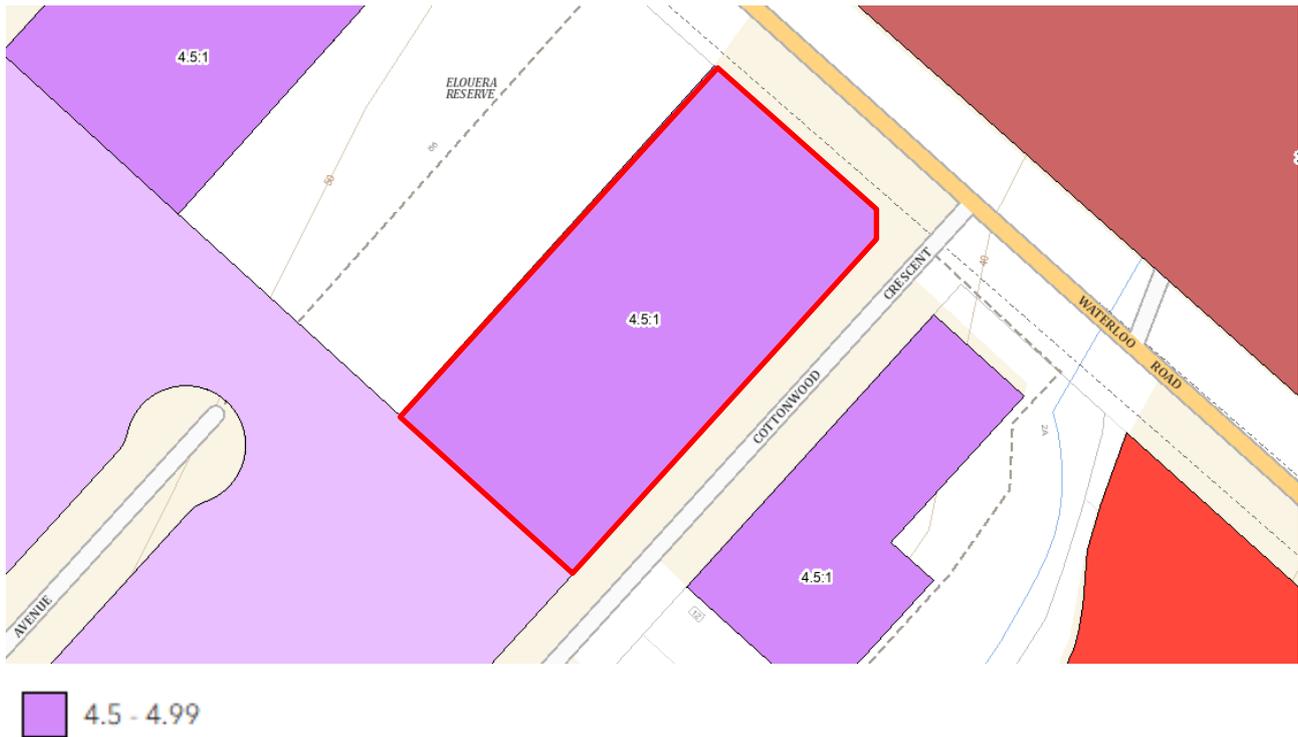
## 3.3. DEVELOPMENT STANDARD TO BE VARIED

Pursuant to Clause 4.4 of the RLEP2014, the site is subject to a maximum FSR of **4.5:1** (refer to **Figure 3** overleaf).

The FSR development standard is a numerical control prescribed under Clause 4.4 and is capable of being varied under Clause 4.6(2) of the LEP. The proposed variation is not excluded from the operation of Clause 4.6(2) as it does not comprise any of the matters listed under Clause 4.6(6) or Clause 4.6(8) of the LEP.

Accordingly, for contextual purposes, statutory definitions prescribed under the LEP and Standard Instrument for Gross Floor Area and FSR are outlined within **Table** (overleaf).

Figure 3 – Maximum Permitted FSR Control (4.5:1)



Source: NSW Planning Portal Spatial Viewer (adapted by Urbis)

Table 3 Statutory Definitions

Term	Statutory Definition
Gross Floor Area	<p><b>gross floor area</b> means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—</p> <ul style="list-style-type: none"> <li>(a) the area of a mezzanine, and</li> <li>(b) habitable rooms in a basement or an attic, and</li> <li>(c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—</li> <li>(d) any area for common vertical circulation, such as lifts and stairs, and</li> <li>(e) any basement— <ul style="list-style-type: none"> <li>i. storage, and</li> <li>ii. vehicular access, loading areas, garbage and services, and</li> </ul> </li> <li>(f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and</li> <li>(g) car parking to meet any requirements of the consent authority (including access to that car parking), and</li> <li>(h) any space used for the loading or unloading of goods (including access to it), and</li> <li>(i) terraces and balconies with outer walls less than 1.4 metres high, and</li> <li>(j) voids above a floor at the level of a storey or storey above.</li> </ul>
Floor Space Ratio	<p>The <b>floor space ratio</b> of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.</p>

### **3.4. EXTENT OF VARIATION TO FLOOR SPACE RATIO**

The proposal now includes an FSR of 4.74:1, or by virtue of the variation extent, a contravention of 0.24:1 (or 5.33%) in relation to the maximum FSR permitted on site being 4.5:1. The variation is attributed to the GFA formerly excluded from the site being that of the breezeways (1,238 m<sup>2</sup>), which has since been reevaluated and transitioned into corridors and technically deemed as habitable floor area – as defined above in **Table 1**.

The updated Architectural Plans prepared by AJC accurately reflect the GFA and FSR calculations applicable to the proposed development.

## 4. JUSTIFICATION FOR THE PROPOSED VARIATION

The following sections provides responses to the key items required to be addressed when considering a variation under the provisions of Clause 4.6. This request has been informed by an assessment of the proposal on:

- Whether compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case; and,
- Whether there are sufficient environmental planning grounds to justify contravening the development standard.

This assessment finds that the proposed variation is well-founded and that due to the technical non-compliance brought about by the proposed amendments to the design, the proposal and extent of variation warrants flexibility in the application of the FSR development standard.

### 4.1. CLAUSE 4.6(2) – IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED?

The FSR control prescribed under Clause 4.4 of the RLEP2014 is a numeric development standard capable of being varied under Clause 4.6 of the RLEP2014.

The proposed variation is not excluded from the operation of Clause 4.6(2) as it does not comprise any of the matters listed within Clause 4.6(6) or Clause 4.6(8) of the LEP.

### 4.2. CLAUSE 4.6(3)(A) – IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The underlying objectives of the FSR development standard as listed within Clause 4.4 of the LEP have been achieved as summarised in **Table 4** outlined below.

Table 4 Assessment of Consistency with Clause 4.4 Objectives – RLEP2014

RLEP2014 – Clause 4.4 Objectives	Comments
(a) <i>to provide effective control over the bulk of future development,</i>	<p>The proposed FSR variation is a result of enclosing the former breezeways, and in effect has no material impacts in relation to the perceived bulk and scale of the built form proposed. Accordingly, the proposed development (as amended) represents the same appearance on the exterior (albeit a reduction in height) as previously proposed.</p> <p>It is evident, that the height and FSR controls are acting independently of one another, and an increase in bulk will not occur as a result of the proposal.</p> <p>Therefore, the bulk and scale proposed is commensurate for the site and will not have any adverse impacts on adjoining sites as discussed throughout this request.</p> <p>The proposal, in particular the contravention in the development standard, is a technical matter brought about by the proposed amendments to the design. The amendments and the contravention will therefore not impact on the bulk of the proposal and consequently satisfy the objective under the LEP.</p>
(b) <i>to allow appropriate levels of development for specific areas,</i>	<p>The proposed development is broadly consistent with built form that has been delivered in the Herring Road Precinct within which the site is located. Contextually and to the south east, the Macquarie Park Corridor is anticipating</p>

RLEP2014 – Clause 4.4 Objectives	Comments
	<p>significant uplift as a consequence of the implementation of the Macquarie park Place Strategy and TODD SEPP</p> <p>The contravention of the development standard is insignificant in relation to this objective, given the design of the proposal has been deemed suitable for the site and locality; and, responds appropriately to the character of the area.</p>
<p>(c) <i>in relation to land identified as a Centre on the <a href="#">Centres Map</a>—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.</i></p>	<p>The site is identified on the 'Centres Map' pursuant to Clause 4.4(1)(c) of the RLEP2014. Consistent with the objective, the proposal seeks to consolidate four (4) allotments identified between 15-21 Cottonwood Crescent.</p> <p>The proposal has been designed to include initiatives targeted toward sustainable development solutions and is appropriately located in relation to key transport infrastructure (rail and bus networks).</p> <p>The north-eastern boundary of the site is required to factor in a 15 m setback at the sub-terranean level of the basement in relation to the Sydney Metro Guidelines, which further reinforces the proposal's ability to respond to patterns associated with public transport infrastructure, whilst still providing a conducive outcome that allows for development to occur in close proximity to key infrastructure.</p> <p>Overall, the proposal is capable of satisfying the objective, with the contravention in FSR having very limited affects on the objective given its technical exceedance brought about by the proposed revisions to the design.</p>

The objectives of the FSR development standard can be achieved notwithstanding the minor technical non-compliance with the standard in the circumstances described in this variation request.

### **4.3. CLAUSE 4.6(3) – ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

There is an absence of environmental harm arising from the contravention of the FSR development standard and sufficient and positive environmental planning grounds to justify contravening the development standard for the following reasons:

- The proposed breezeways were originally proposed following engagement with the Urban Design Review Panel to introduce a natural and innovative design element that would contribute toward improving natural ventilation across the buildings. The breezeways were considered innovative given the function they provide in terms of providing a natural ventilation mechanism as opposed to generating additional power across the site through mechanical ventilation. Furthermore, an organic element was proposed to complement the breezeways, through the integration of internal landscaping planter boxes which would assist in provide a safety barrier, as well as screen potentially windy elements. Accordingly, this approach has since been omitted due to concerns raised by Council in relation to amenity of future occupants; the breezeways enclosed; and, corridors provided, which has resulted in the technical non-compliance with the FSR development standard.
- Notwithstanding the above, the design proposed will satisfy environmental considerations in relation to the ADG; will not have any amenity impacts on or offsite as a result of the breach in FSR; and will result in a highly functional and operable building once constructed and delivered.

- The variation request in relation to FSR is in relation to portions of the site that were previously proposed to be excluded from the counting of GFA / FSR, i.e. breezeways. By enclosing the building to have operable corridors that respond to climatic conditions, results in a technical non-compliance to the development standard. Accordingly, the variation will not result in any additional bulk or scale compared to that of the original scheme.
- The proposed variation will not generate any additional amenity impacts beyond that of a compliant scheme as previously proposed in relation to overshadowing, view loss or privacy. The Architectural Plans prepared by AJC reinforce the generally compliant nature of the proposed development.
- The variation is in relation to ancillary built form components such as corridors and not directly related to dwellings / apartments; therefore, if the variation was brought about by formally habitable floor area, this may have resulted in further exceedances to the height variation. Notwithstanding, to respond to the topography of the site, the proposed height has been reduced and the floor areas associated with the breezeways/corridors included to appropriately respond to the existing conditions of the site.
- Strict compliance with the FSR development standard is considered to unreasonable as it would require the building to further reduce the height and consequently remove apartments / dwellings able to be achieved across the site.
- Further, a key objective of the proposal is to provide a well-balanced and conducive design outcome that responds to the site conditions; the surrounding environment; existing and proposed development; consideration of accessibility; and, maximising of dwellings able to be achieved on a site well-positioned in relation to key points of interest (Macquarie University and the Macquarie Centre) and accessible transport infrastructure (bus and rail networks).

In accordance with the above, it is considered that there are sufficient environmental planning grounds and merit-based justification in order to support the technical non-compliance and variation sought by this proposal.

## 5. CONCLUSION

For the reasons set out within this written request, compliance with the Floor Space Ratio development standard prescribed under Clause 4.4 of the *Ryde Local Environmental Plan 2014* is unable to be achieved. Notwithstanding, this assessment demonstrates that there are sufficient environmental planning grounds and merit to warrant a variation to the maximum Floor Space Ratio applied across the site.

It is reasonable and appropriate to vary the Floor Space Ratio control to the extent proposed for the following reasons:

- The proposed development facilitates a mixed-use development on the site. The development is generally consistent with the desired built form characteristics and land use outcomes of the immediate context and surrounding locality within Macquarie Park. The proposed variation associated with the enclosure of breezeways to become operable corridors is driven by a technical non-compliance following ongoing engagement with Council and would not result in additional bulk and scale to the proposal.
- Strict compliance with the development standard is unreasonable and unnecessary as the objectives of Clause 4.4 of the RLEP2014 and the MU1 Mixed Use zone objectives are achieved by the proposed development, notwithstanding the variation proposed.
- Strict compliance with the development standard does not promote any identifiable public benefit other than to satisfy Council's intent for consistency and continuity in their approach in relation to design, engineering and application of breezeways. Following engagement with Council, the approach to be taken as proposed (and as amended) is considered acceptable given the non-compliance is a technical matter brought about by the enclosing of breezeways.
- There are sufficient environmental planning grounds to justify contravening the development standard as it applies to FSR, and there are no perceptible environmental impacts resulting from the contravention of the development standard.

For the reasons outlined above, this Clause 4.6 Variation Request is well-founded. The development standard is unreasonable in the circumstances and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of FSR should be applied.

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