

3 Farmhouse Road, Westmead

# Clause 4.6 – Building Height Development Standard

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## 3 FARMHOUSE ROAD, WESTMEAD

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Prepared under instructions from  
[Combined Projects \(Westmead\)](#)

by

[Aaron Sutherland](#)  
B Town Planning UNSW

aaron@sutherlandplanning.com.au  
Tel: 0410 452 371  
PO BOX 814 BOWRAL NSW 2576

|      |   |    |
|------|---|----|
| 1.0  | CLAUSE 4.6 REQUEST – BUILDING HEIGHT  | 4  |
| 1.1  | Introduction  | 4  |
| 1.2  | Clause 4.6 Exceptions to development standards  | 5  |
| 1.3  | Development Standard to be varied   | 6  |
| 1.4  | Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?  | 7  |
| 1.5  | Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?  | 11 |
| 1.6  | Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)             | 12 |
| 1.7  | Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives | 12 |
| 1.8  | Clause 4.6(5) Secretary Considerations  | 14 |
| 1.9  | Objectives of Clause 4.6  | 14 |
| 1.10 | Conclusion  | 15 |

# 1.0 CLAUSE 4.6 REQUEST – BUILDING HEIGHT

## 1.1 Introduction

On 1 November 2017, development consent was granted to DA/1271/2016 for construction of a residential flat building containing 344 units over basement car parking with heights ranging between 6-20 storeys at 3 Farmhouse Road, Westmead (formally known as Lot 4, 158-164 Hawkesbury Road and 2A Darcy Road).

Since the time of the approval of DA/1271/2016, there have been significant strategic planning, transport planning and policy changes in relation to Westmead including the following:

- In November 2017, the Department of Planning and Environment announced Westmead as a Planned Precinct with a health and education area north of the rail line.
- Parramatta Light Rail – Stage 1 has been announced and construction is currently under way with the Westmead Light Rail stop to be built at corner of Hawkesbury Road and Railway Parade. Parramatta Light Rail Stage 1 will connect Westmead to Carlingford via Parramatta CBD and Camellia.
- Sydney Metro West line has been announced and construction is currently underway with the new Metro platform located south of the existing Westmead Station on the eastern side of Hawkesbury Road, Sydney Metro West will connect the Sydney City Centre (CBD) with Westmead.
- Sydney University has been chosen by the NSW Government to develop a new world class multi-disciplinary campus within the Westmead Health and Innovation District which will accommodate 25,000 students.
- In March 2020, the City of Parramatta Council's Local Strategic Planning Statement (LSPS) City Plan 2036 (LSPS) came into effect and sets out a 20-year land use planning vision for the City of Parramatta. The LSPS identifies that the Westmead Health and Education Precinct provides a major conglomeration of health, research and medical services. The LSPS also identifies target for 28,700 additional jobs and 4,500 dwellings in Westmead by 2036.
- The Westmead Place Strategy has been prepared and placed on public exhibition from December 2020 to March 2021. The Westmead Place Strategy identifies a bold vision for Westmead to be Australia's premier health and innovation district with a jobs growth of 50,000 by 2036. The Strategy includes an action to undertake further studies for housing intensification and diversification within 800 metres of Westmead Station.

The site is now exceptionally well located with immediate proximity to not just a single train station, but a train station, metro station and light rail station. The site is also within a precinct which is earmarked for significant jobs and student growth immediately around the site. Therefore, it is critically important to ensure that this significant landholding optimises the delivery of housing to support this growth, within the previously identified urban design framework for the site. Accordingly, the changes in the strategic and planning context have prompted a design review of the approved development to understand whether it has sufficiently fulfilled the environmental capacity of the site.

This review has been undertaken by Gyde in collaboration with Turner architects which has identified that an alternative approach towards the development of the site compared to the approved development DA 1271/2016 would achieve urban design benefits including greater diversity of scale, increased variety of architectural expression, and an accentuation of the slenderness of form of the tower. These benefits are achieved whilst still adhering to the previously established urban design principles of for the overall site, including the principle of downward transition from south to the north.

The proposed development is for alterations and additions to an approved residential development DA 1271/2016 for various changes to the layout and arrangement of apartments, an additional 4 floors to Buildings

D and F respectively, and expansion of the basement level 04 at 3 Farmhouse Road, Westmead (formally known as Lot 4, 158-164 Hawkesbury Road and 2A Darcy Road, Westmead).



Figure 1:

Aerial view of the site (Source: Six Maps, Department of Lands 2021)

### 1.2 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the PLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument.

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the height of buildings development standard be varied.

### 1.3 Development Standard to be varied

Clause 4.3 states:

- (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.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map..

Building height (or height of building) is defined in the dictionary of PLEP as the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

There are two height controls on the subject site being 31 metres (Zone U1) in the northern portion of the site, 40 metres (Zone W) in the southern portion of the site as shown in Figure 2.

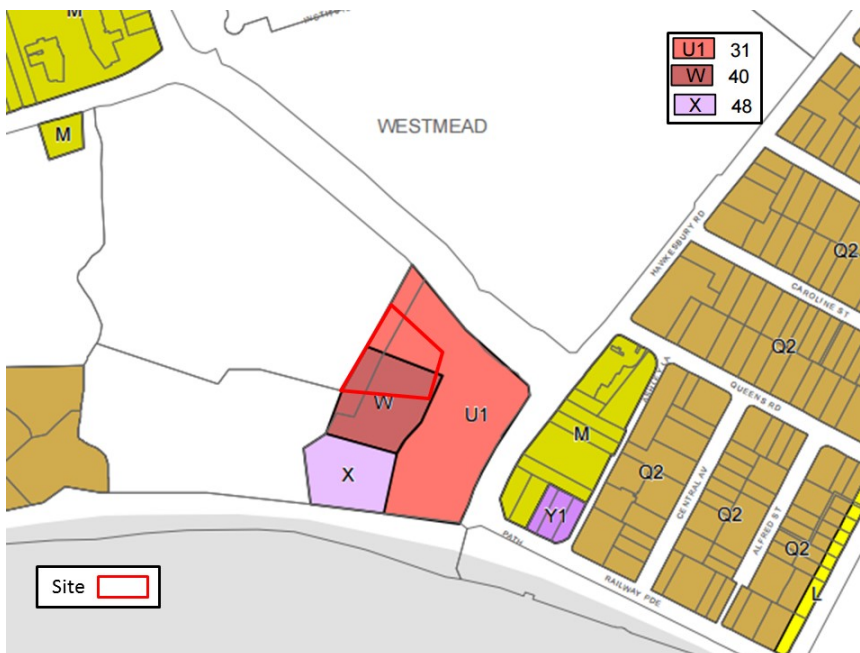


Figure 2:

Extract from the PLEP Height of Buildings Map



### Extent of Variation to the Development Standard

The approved development of the site under DA 1271/2016 departs significantly from the height controls with a departure of 19.3% for Building E, 23.7% for Building F and 80.3% for Building D.

These departures were supported because the height controls for the site derive from a masterplan for the site which has since been abandoned by Council. As a result, the building height development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard on the subject and surrounding sites and hence compliance with the standard is unnecessary and unreasonable.

A comparison of the previously approved and proposed new heights for Buildings D and F against the development standard applicable to the site is illustrated below:

|                                   | Building D       | Building F      |
|-----------------------------------|------------------|-----------------|
| <b>Approved height</b>            | 72.15m           | 38.35m          |
| Approved variation to 31m control | N/A              | 7.35m or 23.7%  |
| Approved variation to 40m control | 32.15m or 80.3%  | N/A             |
| <b>Proposed height</b>            | 84.5m            | 53.4m           |
| Proposed variation to 31m control | N/A              | 22.4m or 72.25% |
| Proposed variation to 40m control | 44.5m or 111.25% | N/A             |

#### 1.4 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

This was recently re-affirmed in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

Whilst it is only necessary to address the first method of the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, which alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement, all five tests are addressed below followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

**1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;**

The specific objectives of the building height development standard, as specified in clause 4.3 of the Parramatta Local Environmental Plan 2011 are identified below. A comment on the proposal’s consistency with each objective is also provided.

- (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,

The proposed distribution of height across the site provides a transition in scale from south to north which sits comfortably within the family of buildings within this precinct. The highest component of the proposed development (the 24 storey tower) is located on the south western portion of the site and is consistent with the intent of the LEP in terms of the distribution of height across the overall site. The proposal incorporates lower building heights on the northern and eastern portions of the site, and accordingly provides an appropriate transition in built form and land use intensity within the area.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

There are no adverse impacts in terms of view, visual and acoustic privacy impacts resulting from the proposed variation to the height of buildings development standard which would warrant strict compliance. The solar analysis prepared by Turner Architects that accompanies the subject application demonstrates that the proposal does not result in a significant adverse impact to the surrounding properties.

(c) to require the height of future buildings to have regard to heritage sites and their settings,

The proposed distribution of built form and massing of the building across the site is the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will provide an appropriate curtilage to the heritage significant buildings located to the south east. The height of the building increases away from the heritage significant buildings. The proposed materials and finishes have been chosen to compliment the heritage significant buildings. The proposed development will have an acceptable impact on views to and from heritage items. Overall the proposal will have an acceptable impact on the heritage significance of nearby heritage items and their settings.

(d) to ensure the preservation of historic views,

The proposed development will not have any meaningful impact on historic views.

(e) to reinforce and respect the existing character and scale of low density residential areas,

Low density residential development is located to the south of the site on the opposite side of the railway corridor and with frontage to Alexandra Avenue. The subject site is visually isolated from the low density residential development with frontage to Alexandra Avenue given the width of the railway corridor, the dense landscaping that surrounds the railway corridor, and the location of recently completed development at 5-7 Maple Tree Road between the site and the railway corridor. The level of separation between the subject site and nearby low density residential development will ensure that the character of these areas are respected and not unreasonably compromised by the proposed development.

(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.

The proposed variation to the height control does not result in any meaningful change when compared with the approved development in relation to sky exposure and day light to open space.

2. **the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**



The underlying objectives and purpose of the height control is relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the proposed height will facilitate an appropriate scale of development having regard to the location of the site within the overall Westmead precinct generally. The development will sit comfortably with the context of the site with no significant adverse impacts to surrounding properties.

**3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

The underlying objective of the height control is to achieve an appropriate height on the site which is compatible with the emerging context of the site. Due to the design, location and configuration of the proposed development, it successfully achieves these objectives.

**4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

The height controls for the site were derived from the ARUP masterplan which informed the Planning Proposal for the site. However, this masterplan has more recently been considered by Council to be “suboptimal” and Council has approved a substantially different site layout and suggested arrangement of buildings under the infrastructure DA for the entire precinct DA/571/2014 which relied upon a Clause 4.6 request in relation to height. As a result, the height controls and boundaries no longer correspond with the approved site arrangement and configuration such that Council has effectively abandoned the height controls for the overall site.

In addition, the approved development of the site under DA 1271/2016, which is proposed to be amended by the subject application, also departs significantly from the height controls with a departure of 19.3% for Building E, 23.7% for Building F and 80.3% for Building D. As a result, the building height development standard has been abandoned, for good reason, in the granting of a consent on the subject site which substantially departs from the standard. Notwithstanding this, the broad principles reflected by the height controls, with increasing height to the west and the south, are considered to remain relevant and the amended development adheres to these principles with the tallest component of the building located in the south western corner of the site.



**Figure 2:**

Site layout approved under the infrastructure DA/571/2014 with overlay of the PLEP height controls

5. **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 or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

The zoning of the land is not considered to be unreasonable or inappropriate.

Strict compliance with the maximum height of buildings development standard is considered to be unnecessary and unreasonable in the circumstance of this site as discussed below:

- The height controls for the site were derived from the ARUP masterplan which informed the Planning Proposal for the site. However, this masterplan has more recently been considered by Council to be “suboptimal” and Council has approved a substantially different site layout and suggested arrangement of buildings under the infrastructure DA for the entire precinct DA/571/2014 which relied upon a Clause 4.6 request in relation to height. As a result, the height controls and boundaries no longer correspond with the approved site arrangement and configuration such that Council has effectively abandoned the height controls for the site. Notwithstanding this, the broad principles reflected by the height controls, with increasing height to the west and the south, are considered to remain relevant and the amended development adheres to these principles with the tallest component of the building located in the south western corner of the site.
- The amended proposal provides a high quality architectural solution that is responsive to the location of the site toward the southern edge of the Westmead precinct and will provide a clearly defined entry into Westmead from the south.
- The amended massing of the development results in a higher level of modulation with the building height decreasing toward the north and east to provide a transition in scale to the future anticipated buildings surrounding the site as well as the heritage significant buildings to the south east such that the proposed arrangement of heights is appropriate for the site and its context.
- The proposed variation to the height control allows for a more slender built form and the proposed variation also facilitates a greater level of modulation in scale between the various built form elements of the building.
- The desired future character outlined for the overall site within section 4.3.4.1 of the PDCP indicates that the future built form on the site shall include taller, slender “statement” buildings located along the railway line to enable a strong visual relationship between the precinct and the CBD. Whilst the site is not directly adjacent to the railway line, the proposal appropriately responds to the desired future character, providing a 24 storey tower in the south western corner of the site. The proposed tower will complement the two towers on the southern adjacent site which are 15 and 25 storeys in height, satisfying the requirement that tall slender statement buildings be provided to enable a visual connection between the Westmead precinct and the Parramatta CBD located to the east.
- The design of the amended proposal involves a dynamic architectural language and a façade treatment with a high level of materiality that will compliment and improve the character of the area.
- A solar analysis prepared by Turner Architects accompanies the subject application and demonstrates that the amended proposal does not result in a significant adverse or non-complying impact to the surrounding properties.
- There are no unreasonable impacts in terms of overshadowing, views, visual and acoustic privacy impacts to adjacent sites resulting from the proposed variation to the height development standard which

would warrant strict compliance, noting that strict compliance is no longer a relevant consideration given the variation to the building height standard that has already been approved on the site.

- Apartments within the development are provided with a high level of amenity. The proposal provides for open space and deep soil in accordance with the relevant ADG requirements and the increased height provides for a slimmer built form and improved residential amenity.
- The proposed variation allows to site to optimise the delivery of housing in an ideal location within the demonstrated environmental capacity of the site.
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.

#### 1.5 Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development

The proposed distribution of built form and massing of the building across the site is the result of a considered analysis of the desired future character of the site and the Westmead precinct generally and the desire to deliver a positive urban design outcome.

The location and scale of the amended development has been specifically designed as a robust architectural solution for the site which optimises solar access both within the site and for adjacent sites as well as providing a high level of modulation to the skyline. The proposed arrangement of buildings across the site will optimise the delivery of housing in an ideal location and within the demonstrated environmental capacity of the site. The proposed revised arrangement of building heights across the site will maintain an appropriate response to the heritage significant buildings located to the south east. In addition, the scale of each individual building within the overall development is also modulated which further assists in creating opportunities for differing architectural language and visual interest.

The scale of the proposed development does not result in any unreasonable impacts on the surrounding properties in terms of views, loss of privacy or visual impact. The architectural package includes a solar access analysis which demonstrates that the proposed scale of the development will not unreasonably overshadow development on surrounding properties.

The scale of the buildings will not be perceived as jarring or antipathetic in the future streetscape and urban design context which will develop in the area.

Strict compliance is no longer considered a relevant benchmark or consideration for the subject proposal given that up to 80.3% variation to the building height development standard has already been approved on the site. There are sufficient environmental planning grounds to warrant the proposed variation to the current height controls as the proposal will achieve a high quality urban design outcome which remains consistent with the key principle for distribution of height within this precinct for a transition of scale from south to north.

The objects specified in section 5(a)(i) and (ii) of the EP&A Act are:

'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..'

The proposed development is consistent with the aims of the Policy and the objects of the EP&A Act in that the proposed extent of height variation has been demonstrated to result in an acceptable urban design outcome. Furthermore, the additional height variation facilitates the proper management of this land because the site is within a precinct which is earmarked for significant jobs and student growth immediately around the site and therefore it is critically important to ensure that this significant landholding optimises the delivery of housing to support this growth, within the previously identified urban design framework for the site. The proposed variation allows for the most efficient and economic use of the land.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height non-compliance in this instance.

#### 1.6 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

#### 1.7 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

#### **Objective of the Development Standard**

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

#### **Objectives of the Zone**

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B4 Mixed Use zone pursuant to the Parramatta Local Environmental Plan 2011 (PLEP) which has the following objectives:

- To provide a mixture of compatible land uses.
- 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.
- To encourage development that contributes to an active, vibrant and sustainable neighbourhood.
- To create opportunities to improve the public domain and pedestrian links.
- To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.
- To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.

The vision for the overall site has been for a transit-oriented development that intensifies and diversifies activity around public transport infrastructure allowing for multiple activities and services, local employment and diverse housing options. The site is extremely well located in terms of access to public transport infrastructure. The amended proposal will deliver additional housing choice within a regionally significant health and education hub that is in close proximity to a range of recreational opportunities and services and facilities and will maximise public transport patronage, cycling and walking.

The architecture of the amended development with buildings orientated where possible to the street and toward an internal common landscaped open space, combined with the development being set within a high quality public domain will result in activated and vibrant places that are used at all times of the day, increasing safety.

The amended proposal exhibits a high level of environmental performance, provides a high level of amenity and an attractive contemporary architectural expression.

For the reasons given the amended proposal remains consistent with the objectives of the B4 Mixed Use zone.

The proposal has been demonstrated to be consistent with both the objectives of the building height development standard as well as the objectives of the zone and therefore the consent authority can be satisfied that the proposal is in the public interest. Furthermore, the public interest is appropriately served by providing an improved urban design outcome, within the demonstrated environmental capacity of the site.

### 1.8 Clause 4.6(5) Secretary Considerations

The matters for consideration under Clause 4.6(5) are addressed below:

(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,

The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(b) the public benefit of maintaining the development standard,

This Clause 4.6 request has demonstrated there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard, which has already been abandoned for this site.

### 1.9 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

(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.

As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 4.3 notwithstanding the proposed variation to the maximum height of buildings development standard.

The architectural package prepared by Turner Architects which accompanies the subject application illustrates the relationship of the proposed development within the context of the site. It demonstrates a high quality outcome for the site which will result in the delivery of a residential development surrounding by landscaping and a built form that will provide for an integrated community set around a central open space area which combined will contribute significantly to the amenity afforded to the general public and future occupants alike.

Allowing the flexible application of the maximum height of buildings development standard in this instance is not only reasonable but also desirable given the context of the site and desire to deliver a positive result for the site which will facilitate an acceptable urban design outcome whilst optimising the delivery of housing in an ideal location.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the maximum height of buildings development standard and will achieve an acceptable and better urban design outcome in this instance in accordance with objective 1(b).



### 1.10 Conclusion

Strict compliance with the maximum height of buildings development standard contained within clause 4.3 of the Parramatta Local Environmental Plan 2011 has been found to be unreasonable and unnecessary in the circumstances of the case. In addition there are sufficient environmental planning grounds to justify the variation. In this regard it is reasonable and appropriate to vary the height of buildings development standard to the extent proposed in this circumstance. Finally, the proposed development and height variation is in the public interest because it facilitates a development which is consistent with the objectives of the standard and the zone and which delivers additional housing within the demonstrated environmental capacity of the site. In this regard it is reasonable and appropriate to vary the building height development standard to the extent proposed.