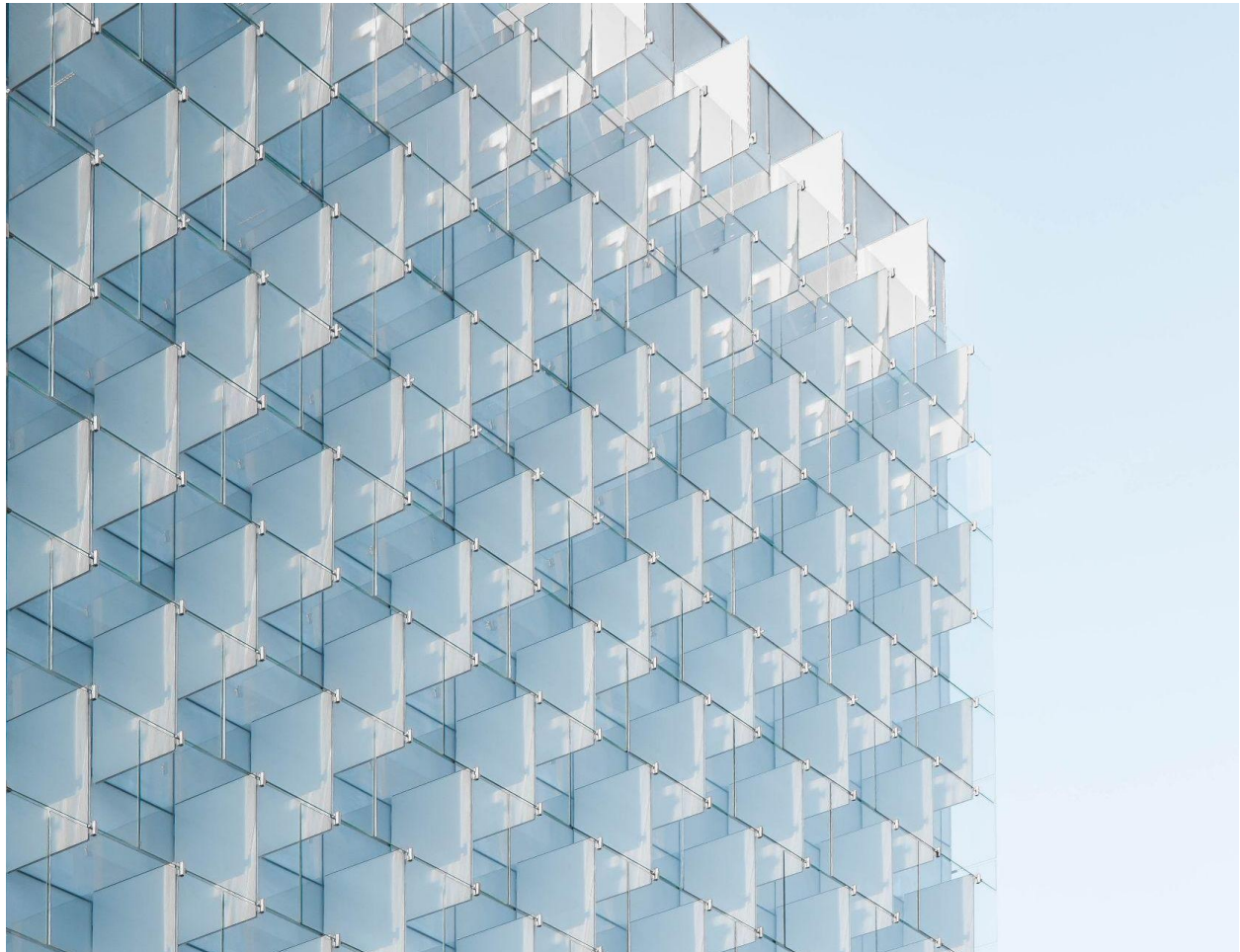


# WILLOWTREE PLANNING



## Clause 4.6 Variation Request to Clause 4.3 of PLEP2011

Proposed Construction of a Dwelling

4 Stringer Place, Oatlands (Lot 18 DP206883)

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**Clause 4.6 Variation Request to Clause 4.3 of the PLEP2011**

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**Clause 4.6 Variation Request to Clause 4.3 of the PLEP2011**

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## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in accordance with Clause 4.6 of the Parramatta Local Environmental Plan 2011 (PLEP2011) to accompany the subject Development Application (DA) for the proposed construction of a dwelling at 4 Stringer Place, Oatlands, legally described as Lot 18 DP 206883 (the Site).

The Site is zoned R2 Low Density Residential pursuant to the PLEP2011 and is located within the Parramatta Local Government Area (LGA). The proposed development is permissible with consent within the R2 zone and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of PLEP2011, with the exception of Clause 4.3 - Height of Buildings for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under PLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed building height non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

### 1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.3 - height of Buildings of PLEP2011 and has been prepared in accordance with the requirements of the Clause 4.6 of the PLEP2011 which includes the following objectives:

- (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.*

Specifically, the proposal seeks variation to the maximum building height prescribed in Clause 4.3 of the PLEP2011 across the North corner of the Site from **9m to 10.7m**.

The development in its proposed built form and scale will provide residential development that is purpose built to satisfy the function of the use and is commensurate in form and scale with the Site and the surrounding residential development. The proposed non-compliance is not likely to have an adverse impact on the area and would simply seek to provide further residential development consistent with the surrounding area.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by PLEP2011.



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### 1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 4.3 of PLEP2011, the Site is subject to a maximum building height of **9m**. The proposal will result in a building height of **10.7m**. **Table 1** below provides a summary of the variation.

TABLE 1. EXISTING CONSENTS			
PLEP2011 Clause	PLEP2011 Development Standard	Maximum Building Height Proposed	Proposed Development Non-Compliance
Clause 4.3 - Height of Building	Maximum height of 9m	<b>10.7m</b>	The Proposal seeks consent for a maximum building height <b>10.7m</b> which is a <b>18.89%</b> variation from the development standard.

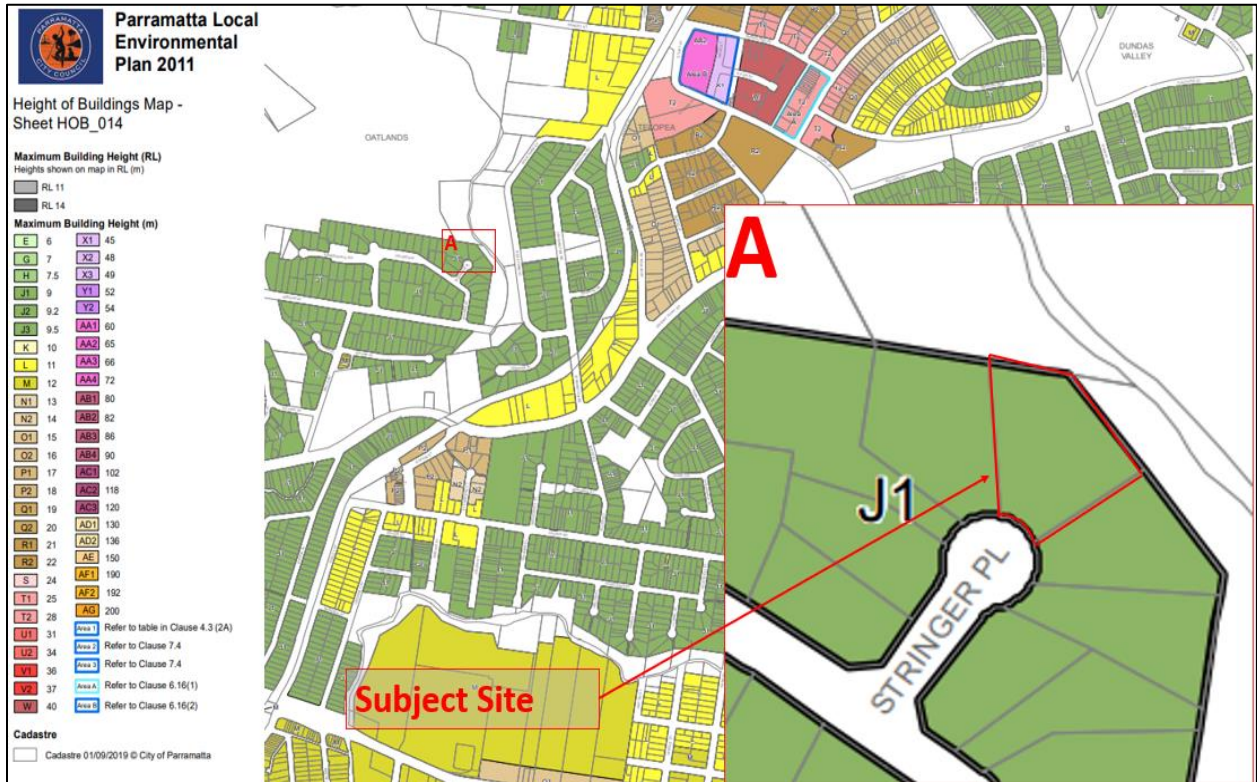


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The maximum height as noted above, is prescribed by the Height of Buildings Map of the PLEP2011 as illustrated in **Figure 1** below.



**Figure 1: PLEP2011 Height of Buildings Map (Source: NSW Legislation, 2022)**

Clause 4.6 of the PLEP2011 contains inbuilt flexibility for varying the height standard. The maximum building height under Clause 4.3 is a 'development standard' to which exceptions can be granted pursuant to Clause 4.6 of the PLEP2011.



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## PART B THRESHOLDS THAT MUST BE MET

### 2.1 CLAUSE 4.6 OF PLEP2011

In accordance with Clause 4.6 of PLEP2015, Parramatta Council is required to consider the following Subclauses of Clause 4.6.

Subclause 4.6(3) states:

- (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*

In addition, Subclause 4.6(4) states that (our emphasis added):

- (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 planning Secretary has been obtained.

Further to the above, Subclause 4.6(5) states the following:

- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State and 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 Planning Secretary before granting concurrence

These matters are responded to in **Part D** of this Clause 4.6 Variation.



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### 2.2 CASE LAW

Relevant case law on the application of the Standard Local Environmental Plan (LEP) Clause 4.6 provisions have established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
  - There are sufficient environmental planning grounds to justify contravening the development standard;
  - The development is in the public interest;
  - The development is consistent with the objectives of the particular standard; and
  - The development is consistent with the objectives for development within the zone.
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under subclause 4.6(4) is a matter of discretion for the consent authority.
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
  - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
  - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
  - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
  - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
  - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in **Part D** of this Clause 4.6 Variation.





## Clause 4.6 Variation Request to Clause 4.3 of the PLEP2011

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## PART C STANDARDS BEING OBJECTED TO

### 3.1 OVERVIEW

The Site is zoned R2 Low Residential and is subject to the underlining objectives of the varied standard as well as the R2 zone under PLEP2011.

### 3.2 CLAUSE 4.3 BUILDING HEIGHT CONTROL UNDER PLEP2011

Clause 4.3 of PLEP2011 identifies the following objectives:

- (l) The objectives of the 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.*

Pursuant to Clause 4.6, the Proposal seeks exception to the maximum permissible Height of Building of 9m.

### 3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the construction of a new dwelling at 4 Stringer Place, Oatlands (Lot 18 DP206883). The Site is subject to a maximum building height of 9m. The development proposed a maximum building height of **10.7m**. The proposal would exceed the 9m Height limit applicable to 4 Stringer Place, Oatlands by **1.7m, which represents a 18.89% variation**.

The maximum building height variation of **10.7m** is located in three (3) portions of the dwelling the corner of master bedroom and corner of the living room and is illustrated on the north and east elevation in the Architectural Plans (**Appendix 2**). Nevertheless, it is noted that the proposed building height variation results from the gradient of the sloping landform of the Site. **Figure 1** demonstrates the sloping topography of the Site and as a result of this the two unhighlighted portions of the dwelling breach the 9m maximum building height. As coloured purple the remaining portion of the dwelling house remains compliant with



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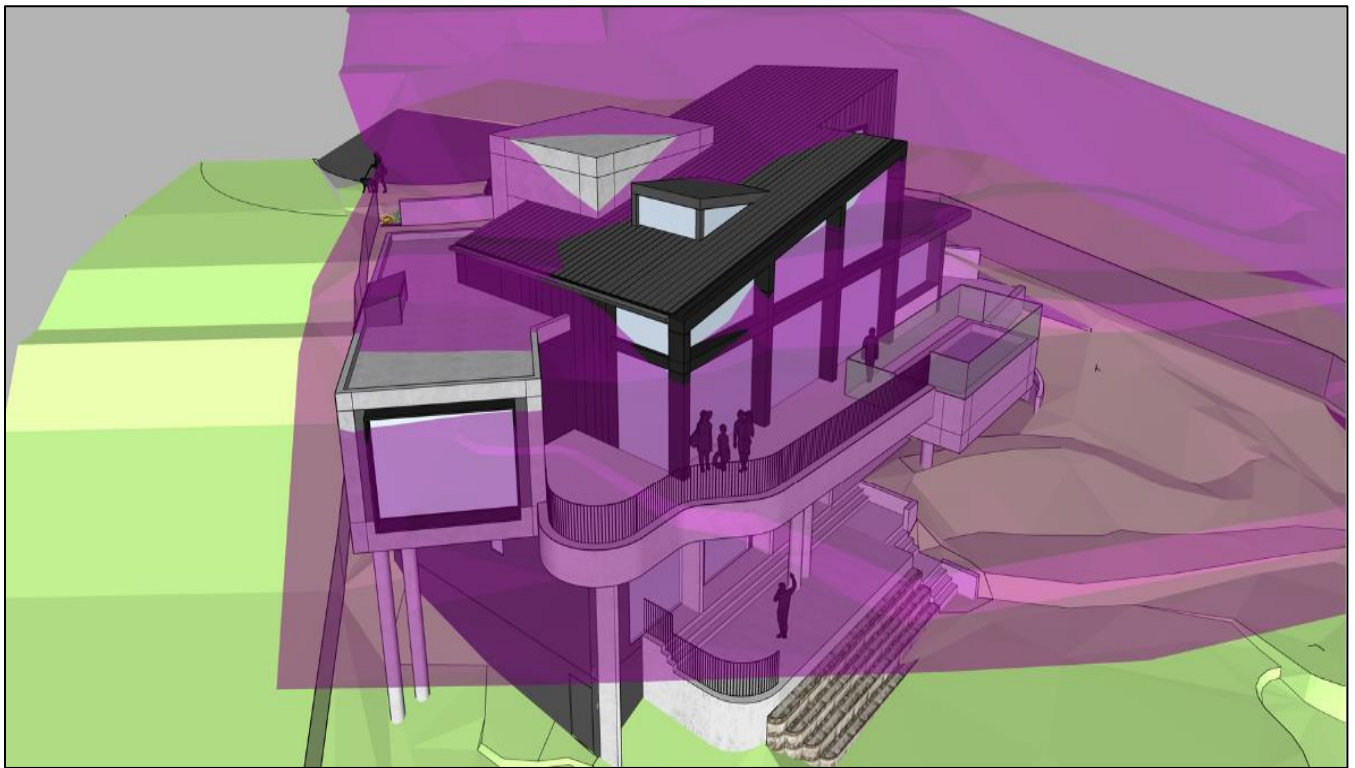


the building height control, exhibiting a variable building height of 9m or less. Furthermore, the building envelope has been carefully developed to integrate and reflect the scale of the surrounding low-density residential development, whilst minimising the potential amenity impacts to the adjoining residential properties as well as the Oatlands Golf Club located to the north of the Site. In addition, due to the context and Site layout, and has been designed to not be a dominate element of the built form.

Overall, the variation to the building height would have a negligible impact on surrounding properties and adequate residential amenity would be retained in terms of overshadowing, solar access and visual and acoustic privacy as demonstrated in the ensuing sections of this report.

This Variation Request has been prepared in accordance with the objectives of clause 4.3 Height of Building and the R2 Low Residential zone objectives of PLEP2011 as required in clause 4.6.

This DA therefore relies upon what is reasonably concluded to be underlying objectives of the standard and the R2 zone.



**Figure 1. 3D Image of proposed dwelling (Group Architects, 2022)**



## Clause 4.6 Variation Request to Clause 4.3 of the PLEP2011

Proposed Construction of a Dwelling

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### PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF PLEP2011

Pursuant to Clause 4.6 of PLEP2011, exception is sought from the height of buildings standard applicable to the Site pursuant to Clause 4.6 of PLEP2011. Clause 4.6(4)(a)(ii) requires the consent authority to be 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.

#### 4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the Proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed contravention will be in the public interest because it is consistent with the objectives of the development standard and the zone. Pursuant to Clause 4.6 of PLEP2011, the Proposal seeks exception to the 9m Height of Building development standard pursuant to Clause 4.3 PLEP2011.

Clause 4.3 of PLEP2011 sets out specific objectives. Those objectives under PLEP2011 are responded to in **Table 2** below:

TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,	<p>The intent of the proposed development is to contribute to the existing low-density residential character of R2 Low Density Residential zone and integrate with the recreational setting of the RE2 Private Recreation zone within the immediate vicinity of the subject Site in a complementary manner, consistent with PLEP2011 and the Parramatta Development Control Plan 2011 (PDCP2011).</p> <p>The design approach for the Site has evolved in a considerate relationship to adjacent residential properties and the nearby Oatlands Golf Club, to ensure their current and future amenity would not be compromised.</p> <p>Further, it is noted that the proposed building height exceedance of <b>1.7m</b>.</p>



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	<p>With its overall Site configuration and a well-resolved built form, the proposed dwelling house would create a high-quality built form, which is complementary to the character of the Oatlands locality. Through the provision of generous landscaping and appropriate setbacks, the proposal would achieve an integration with the existing built form and character of the surrounding development.</p>
<p>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</p>	<p>The proposal exhibits a proposed building height of <b>10.7m</b>. The proposed variation in height is not anticipated to result in adverse visual impacts relating to view disruption, loss of privacy or solar access.</p> <p>Hence, the proposal is not anticipated to compromise the visual amenity of the adjoining dwelling to the east.</p> <p>Further, the proposed development has been designed to respond the character and built form of the Oatlands locality. Therefore, as a result of the proposed dwelling, there would be no undue impacts, with regard to visual amenity or view loss.</p> <p>In addition, the proposal as incorporated a mixture of materials and finishes, presenting an aesthetically pleasing and articulated built form to mitigate any visual impacts. Accordingly, the proposed building height variation is considered appropriate and is not anticipated to impact on the visual amenity or privacy of the surrounding development.</p>
<p>to require the height of future buildings to have regard to heritage sites and their settings,</p>	<p>The Site is not subject to any identified heritage items or significance nor is it located in a Heritage Conservation Area. It is noted that the proposal is located in proximity to a local heritage item to the east being 1613 - <i>Vineyard Creek and vegetated banks (natural area)</i>.</p> <p>Given that the proposal would be limited to the Site boundaries and is adequately separated from the heritage item, the proposal is not anticipated to result in any adverse impact to the significance or fabric of the identified heritage item.</p>
<p>to ensure the preservation of historic views,</p>	<p>The Site is located in an area subject to an existing residential area, for which the proposed dwelling would be complementary and compatible. There</p>



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	are no historic views relevant to the Site. Therefore, no further consideration is warranted in this regard.
to reinforce and respect the existing character and scale of low density residential areas,	It is noted that the built form of the proposed dwelling is consistent with the existing character and scale of the existing dwellings in the surrounding area. The proposed dwelling has been designed to complement the existing low density of the Oatlands locality. The building envelope has been carefully developed to reflect the scale of the surrounding residential development, through the incorporation of generous landscaped open space and appropriate side setbacks. The high-quality architectural treatment of the proposed dwelling is considered to mitigate any significant impacts regarding streetscape character.
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.	This objective is not directly applicable to the subject site. No further consideration is considered warranted in this respect.

**4.2 OBJECTIVES OF THE ZONE**

The Site is currently zoned R2 Low Density Residential under PLEP2011. Consistency with the R2 Low Density zone is addressed **Table 3** below.

<b>TABLE 3: CONSISTENCY WITH THE R2 LOW DENSITY RESIDENTIAL ZONE OBJECTIVES</b>	
Zones objectives	Comments
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low density residential environment.</li> </ul>	The proposal would provide for low density residential housing within the R2 Low Density zone, which is consistent with the existing and future character of the Oatlands locality.
<ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	The proposal would not impact on the provision of facilities or services that meet the day to day needs of residents within the R2 zone.
<ul style="list-style-type: none"> <li>To ensure that non-residential land uses are located in a context and setting that minimises impacts on the amenity of a low density residential environment.</li> </ul>	The proposal does not relate to a non-residential land use and is not anticipated to impact on the amenity of any adjoining properties.



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<ul style="list-style-type: none"><li>▪ To allow for a range of community facilities to be provided to serve the needs of residents, workers and visitors in residential neighbourhoods.</li></ul>	The proposal would not inhibit the provision of community facilities for residents, works and visitors within the R2 zone.
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### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ set out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. Establish that compliance with the development standard is **unreasonable or unnecessary** because **the objectives of the development standard are achieved notwithstanding non-compliance with the standard**.
2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. Establish that 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.
5. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the above rationales is required to be established. Notwithstanding the proposed variation, the development is consistent with the underlying objectives of the standard for Building Height and the relevant Zoning prescribed under PLEP2011.

In view of the particular circumstances of this case, strict compliance with Clause 4.3 of PLEP2011 is considered to be both unnecessary and unreasonable. The proposed development does not conflict with the intent of Clause 4.3 as demonstrated above and satisfies the objectives, notwithstanding the proposed numeric variation.

The proposed development is justified on the following environmental outcomes:

- It represents logical and coordinated development of the Site for low density residential development;



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- It would result in an improvement to the existing layout and use of the Site through a carefully designed built form that is responsive to the Site context and its desired character;
- The architectural design provides a high-quality built form outcome for the Site and is functional for the proposed outcomes;
- The proposed dwelling has been designed to not be a dominant feature of the built form and would not be highly visible from the public domain on Stringer Place;
- The proposed variation to the building height would not give rise to any environmental or amenity impacts to the surrounding development in relation to views, overshadowing, solar access, noise and visual privacy;
- Compliance may be achieved by reducing the scale of the development, but this would undermine both the visual quality and functionality of the design and the requirements of the low density residential dwelling would not be achieved; and
- Reducing the building height to achieve a compliant building height would not deliver any measurable environmental or amenity benefits; and
- Compliance with the remaining development standards applicable to the Site is achieved.

In light of the above, the abovementioned justifications are considered valid and, in this instance, the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site when compared to a compliant building height scenario. The objectives of Clause 4.3 as well as the R2 Low Density Residential zone would be upheld as a result of the proposed development. Therefore, in light of the above, the application of the building height standard is therefore unreasonable and unnecessary in response to the proposed development.

### 4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the maximum permissible building height:

- The proposal is entirely consistent with the underlying objectives and purposes of the standard.
- The proposal is entirely consistent with the underlying objectives of the R2 Low Density Residential zone.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**.
- The proposed non-compliance results in a built form and land use, which is permitted at the Site.
- The proposal is consistent with the desired future character of the Site within the area and generally complies with the relevant built form controls including setbacks, landscaping and car parking.
- The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity particularly in regard to visual bulk, privacy, overshadowing and sunlight access whilst expanding on the functional industrial land use on the eastern side of the Site.



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For the reasons outlined above, it is considered that the proposed variation to the building height control under Clause 4.3 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under PLEP2011.

### 4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assess the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The Proposal will positively contribute to the existing residential land use on the Site within the Parramatta LGA. The proposal can furthermore be progressed without any significant environmental impacts.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The Proposal has been designed to include appropriate ecologically sustainable measures and has adequately considered environmental impacts on the surrounding locality.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposal will result in a residential dwelling that will not provide unacceptable economic, environmental or social impact.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The Proposal will not impact the delivery and maintenance of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The Proposed development has been sited so as to result in minimal impacts on the surrounding environment.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The existing Site is not identified as a Heritage Item, within a heritage conservation area or as containing Aboriginal or cultural heritage significance. The Proposal will not impact any Aboriginal or cultural heritage significance of the surrounding land.
<i>(g) to promote good design and amenity of the built environment,</i>	The proposal will provide an appropriate height on the Site is of a form and scale that is suitable in the residential area. An appropriate mix of finishes and materials and have been employed to ensure high quality urban form is achieved when viewed from





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	the street and surrounding sites with minimal impacts on the amenity of the built environment.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The DA will not be required to be determined by different levels of state like the Independent Hearing and Assessment Planning.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA would be subject to the relevant public notification requirements.

### 4.6 PUBLIC INTEREST

As outlined in **Section 2.2** *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 emphasised that it is for the proponent to demonstrate that the proposed non-compliance with a development standard is in the public interest. Clause 4.6(4)(a)(ii) requires the proposal 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.

**Sections 4.1** and **4.2** above demonstrate how the proposal is consistent with the objectives of the development standards, as well as the R2 zone objectives under PLEP2011.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The Proposal provides the following public benefits:

- Supports the provision of low density residential housing in the Oatlands locality;
- Contributes positively to the residential character of the R2 Low Density Residential zone;
- Enhance the visual interest of the Oatlands locality;
- Stimulates a development outcome that is compatible with the existing and emerging residential area; and
- Facilities development that is a permissible land use and consistent with the R2 zone objectives.

There are no significant public disadvantages which would result from the proposed development. Accordingly, the public advantages of the proposed development are considered to far outweigh the public disadvantages. The proposed development is therefore considered to be justified on public interest grounds.



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### 4.7 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 4.3 would not raise any matters of significance for State or Regional environmental planning. It would also not conflict with any State Environmental Planning Policies (SEPPs) or Ministerial Directives under Division 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the NSW Department of Planning, required that all DAs including a variation to a standard of more than 10% be considered by Council rather than under delegation.

### 4.8 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Strict compliance with the Clause 4.3 building height control would result in:

- The proposal unable to support the provision of low density residential development in the Parramatta LGA, which is outlined as an objective for the R2 zone; and
- Not result in any measurable environmental or amenity benefits to surrounding properties or the public domain.

Further to the above, in the event the development standards were maintained, the resulting benefits to the adjoining properties and wider public would be nominal.

Accordingly, there is no genuine public benefit in maintaining this strict building height control in the context of the proposed development.

### 4.9 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3 of PLEP2011 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of PLEP2011, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- There is a relatively minor nature of the proposed exceedance
- No unreasonable environmental impacts are introduced as a result of the proposed development;
- The development is consistent with the objectives for development within the zone;
- The development is consistent with the objectives for development of the particular standard;



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- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

It is furthermore submitted that:

- Strict compliance with the standard would not result in a better planning outcome for the land as it may prevent the development of well-considered proposals;
- The proposed development is consistent with the desired character of the surrounding locality; and
- No unreasonable impacts are associated with the proposed development.

Overall, it is considered that the proposed Clause 4.6 Variation to the FSR standard is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of PLEP2011.



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## PART E CONCLUSION

For the reasons outlined in this Clause 4.6 Variation request, it is requested that Parramatta City Council exercise their discretion and find, that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the PLEP2011.

Given the justification provided above, as well as the proposal being otherwise compliant with the PLEP2011, consideration and satisfaction of the objectives of the PDCP2011, and strategic suitability of the proposed development at both a Local and State Government Level. This Clause 4.6 Variation under PLEP2011 is well founded and should be favorably considered by council.

