

Clause 4.6 Variation Request

Clause 4.3 of the Parramatta Local Environmental Plan 2023 – Height of Buildings

132 Victoria Road, North Parramatta
Prepared on behalf of JS Architects Pty Ltd



Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.



We pay our respects to their Elders past, present and emerging.

'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' - translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Contact	Schandel Fortu Director	sfortu@ethosurban.com 9956 6962	
This document has been prepared by:		This document has been reviewed by:	
 Justin Tse		 Yousheng Li / Schandel Fortu	
	27.02.2023	27.02.2023	
Version No.	Date of issue	Prepared By	Approved by
Draft	17.02.2023	JT	YL / SF
V1	27.02.2023	JT	YL / SF

Reproduction of this document or any part thereof is not permitted without written permission of Ethos Urban Pty Ltd. Ethos Urban operates under a Quality Management System. This report has been prepared and reviewed in accordance with that system. If the report is not signed, it is a preliminary draft.



Ethos Urban Pty Ltd | ABN 13 615 087 931 | 173 Sussex Street Sydney NSW 2000 (Gadigal Land) | +61 2 9956 6962 | ethosurban.com

Contents

1.0	Introduction.....	4
2.0	Development Standard to be Varied	5
3.0	Justification for Contravention of the Development Standard.....	7
3.1	Role of the consent authority	7
3.2	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	8
3.3	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	13
3.4	Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard	16
3.5	Other Matters for Consideration	16
4.0	Conclusion.....	18

1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of JS Architects Pty Ltd. It is submitted to City of Parramatta Council (Council) in support of a development application (DA) for a 7 storey commercial/residential mixed use development at 132 Victoria Road, North Parramatta.

Clause 4.6 of the Parramatta Local Environmental Plan 2023 (PLEP 2023) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard for building height under clause 4.3 of the PLEP 2023.

This clause 4.6 variation request demonstrates that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the building height development standard, the proposed development:

- Achieves the objectives of the building height standard notwithstanding the variation to the standard, in that:
 - The height variation arises from the bonus FSR permitted under the Housing SEPP as well as with the draft amendments to the Housing SEPP, as published in November 2022 by the NSW Department of Planning and Environment. The proposed built form and height is favourable to a scheme with a compliant height that visually bulky resulting from non-compliant setbacks;
 - Given the above, the proposal, in varying the height standard as a result of providing affordable housing, seeks to minimise visual and view impacts, loss of privacy and solar access when compared to a compliant scheme;
 - The site is well separated from nearby heritage items and preserves historic views; and
 - The proposal reinforces and respects the existing character and scale of low density residential areas by virtue of its separation from these areas by roads resulting in acceptable shadowing, privacy and visual impacts to surrounding properties;
- Has sufficient environmental planning grounds in achieving the provision of affordable housing in a manner consistent with the Housing SEPP in an accessible location close to the Parramatta CBD and its consistency with the objects of the EP&A Act;
- Is in the public interest as it achieves the objectives of the B1 Neighbourhood Centre zone and the building height development standard; and
- There are no other matters which may prevent the Secretary from granting concurrence.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2023.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the PLEP 2023. Subclause (2) provides that “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”.

This clause 4.6 variation request seeks to justify a proposed contravention of the height of buildings development standard set out in the PLEP 2023. Under clause 4.3 of the PLEP 2023, the site is mapped with a height of 15 metres as shown on the Height of Buildings Map (sheet 009) – refer to **Figure 1**.



Figure 1 Extract from Height of Buildings Map

Source: JS Architects

The extent of the proposed height variation is illustrated below in **Figure 2** and **Figure 3**. The proposal has a maximum height of 26.5 metres for the point encroachment at the lift overruns to the centre of the site. The extent of variation is 14.5m beyond the permitted building height. The main building envelope for the proposal is 23.38m to the top of the habitable components of the development. This represents a variation of 11.39m which is a 94% variation to the building height standard.

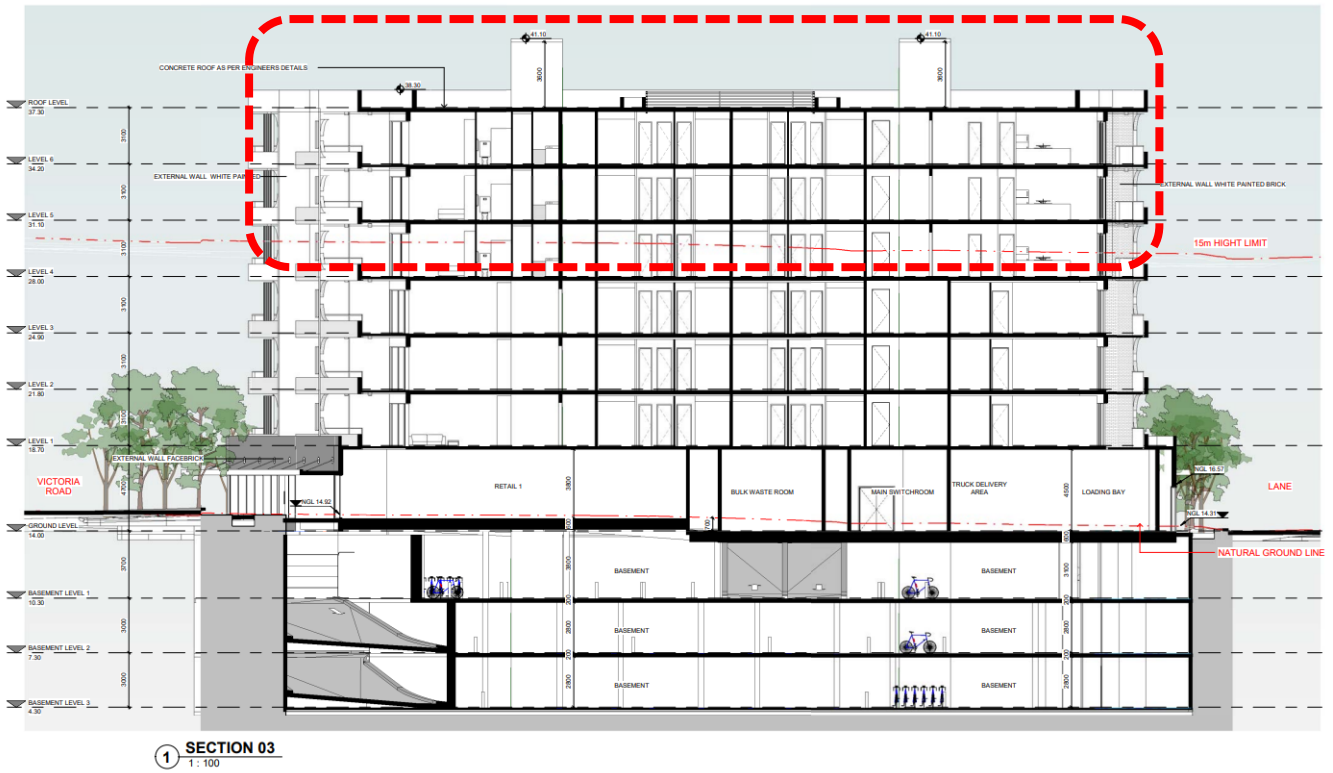


Figure 2 Proposed height variation section

Source: JS Architects



Figure 3 Extract of height plane diagram

Source: JS Architects

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the PLEP 2023 provides that:

4.6 Exceptions to development standards

- (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.

Further, clause 4.6(4)(a) of the PLEP 2023 provides that:

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action); and
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).

The relevant matters contained in clause 4.6 of the PLEP 2023, with respect to the building height development standard, are each addressed below, including with regard to these decisions.

3.1 Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The Council is required to form these two opinions first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the Council needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the consent authority to reach this level of satisfaction.

3.2 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)*, the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the PLEP 2023 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- 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 (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method.

3.2.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.3 of the PLEP 2023 are:

- 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.*

3.2.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

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

The intent of the height of buildings provision and this specific objective is nominate appropriate building heights on the height of buildings map, which has nominated a height of 15m for the site. The mapped maximum building height for each site has been tested in the LEP making process to ensure that the density of the site is appropriate and presents acceptable built form and density impacts to its surrounds and provides an appropriate transition in built form.

The variation to the building height control has resulted from the provision of affordable housing as part of the proposal, which forms 50% of the GFA. The Housing SEPP incentivises the provision of affordable housing as part of

development, through Clause 17 of the Housing SEPP which grants development an 'additional floor space ratio'. This additional FSR is 0.5:1 in the current Housing SEPP, and 0.625:1 in the current draft of the Housing SEPP with the Explanation of Intended Effect exhibited in November 2022.

The proposal is entirely consistent with the intent of the floor space ratio in Clause 17 of the Housing SEPP, which incentivises the provision of affordable housing in NSW. As a result, given that the proposal does not seek additional FSR beyond the FSR envisaged under the LEP and the draft changes to the Housing SEPP, the FSR for the site is considered acceptable.

The proposed height variation has arisen as a direct result of this variation to the FSR control. The full FSR bonus and all associated benefits with developing affordable housing in this accessible location close to the Parramatta CBD is only achievable with the proposed height variation.

As aforementioned, DPE is currently looking to increase the supply of in-fill affordable housing in NSW. Although bonus FSR for affordable housing is provided in the Housing SEPP, there is no equivalent bonus for building height. However, as planning controls for building height are aligned with FSR, it is not possible to deliver a built form at the site that both utilises the affordable housing bonus FSR to maximise the provision of affordable housing, and also comply with the mapped 15 metre height limit.

The proposal provides a transition in built form from lower density areas to the north and west to the neighbourhood centre to the east. The additional density is a direct response to satisfying the strategic intent for affordable housing on the site through the provision of additional floor space in this location within the neighbourhood centre. The proposed design provides setbacks and building separation consistent with the requirements in the Parramatta DCP and ADG respectively. Compliance with these built form controls ensures that the additional height resulting from the proposal is controlled and the building is of an appropriate appearance and form within the streetscape.

Noting the proposal is commensurate with the built form intensity within the locality. There is precedence on a nearby at the corner of Victoria Road and Macarthur Street (85 Victoria Road), Parramatta. At 85 Victoria Road, the Council has supported a variation to the maximum permitted building height with a variation of 6.25m or a departure of 41.7% from the development standard of 15m. The development which similarly sits at a prominent corner on one of the main arterial roads within Parramatta, provides an appropriate corner site treatment commensurate with the surrounding emerging character. This was approved under DA/54/2018, for a 6 storey building, on the basis that the development promotes the orderly development of land having regard to the site's area, site constraints, sustainable management of the heritage items on the site and would retain the social and economic welfare of the community, particularly that of neighbouring properties. The development at has been supported on the basis that it maintains consistency with the objectives of the B1 Neighbourhood Centre zone.

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

Visual impact, views and visual privacy

The proposal is of a podium-and-tower form to reduce the perceived bulk and scale when viewed from the surrounding public domain. The upper residential levels of the building are set back from the ground floor to provide visual distinction from the podium when viewed by pedestrians along Victoria Road, Gaggin Street, and the unnamed northern laneway. Multi-level setbacks have been provided at the podium level and a further additional setback at levels 4 and above to the east towards 134-138 Victoria Road, as shown in **Figure 4**. This is intended to provide a suitable interface to the existing building to the east, both with regards to the current built form, and upper level setbacks if the neighbouring site was to be redeveloped in the future, noting it has the same planning controls and zoning as the subject site.



Figure 4 Built form section showing setbacks to Gaggin Street (right) and multi-level setbacks to 134-138 Victoria Rd (left)

Source: JS Architects

The proposed building height strikes an appropriate balance between delivering a high standard of architectural merit and providing an envelope that maintains a high level of amenity with articulation elements and boundary setbacks to not appear overbearing, while delivering the necessary quantum of floorspace to maximise the provision of affordable housing, in line with the Housing SEPP as well as the proposed changes to the Housing SEPP.

An alternative scheme may have the same FSR with a reduced height, however, would come at the expense of a blockier building that presents excessive bulk to the street and does not comply with the setback and built form recommendations of the DCP. Further, a compliant scheme would result in a variation to the building separation and setback requirements of the ADG which would have adverse visual and privacy impacts to neighbouring properties. A reduced, compliant setback and building separation, particularly to the east, would reduce such impacts from occurring.

Overshadowing

The proposed height variation results in acceptable shadowing impacts to surrounding residential properties. While shadowing occurs as a consequence of the height of the building, the FSR variation in providing additional floorspace and provision of compliant setbacks directly contributes to the height of the building. The shadow analysis confirms that neighbouring properties to the south across Victoria Road at 117, 119 and 125 Victoria Road and 50 Morton Road all comfortably receive more than three hours of solar access during the winter solstice.

Part 4.2.3.1 of the PDCP 2011 requires the following:

“Detached single and two storey, dual occupancy and townhouse dwellings within the development site and adjoining properties are to receive a minimum of 3 hours sunlight in the primary living area, and in at least 50% of the private open space between 9am and 3pm on 21 June”.

The shadow diagrams demonstrate that the that all properties to the south on Victoria Road receive solar access to windows and private open space for at least three hours as reflected in Figure 5. The design, in having appropriate compliant building setbacks and building separation, achieves a slender form which allows shadows to travel quickly throughout the day and ensuring that any shadowing is limited to short periods during the day.



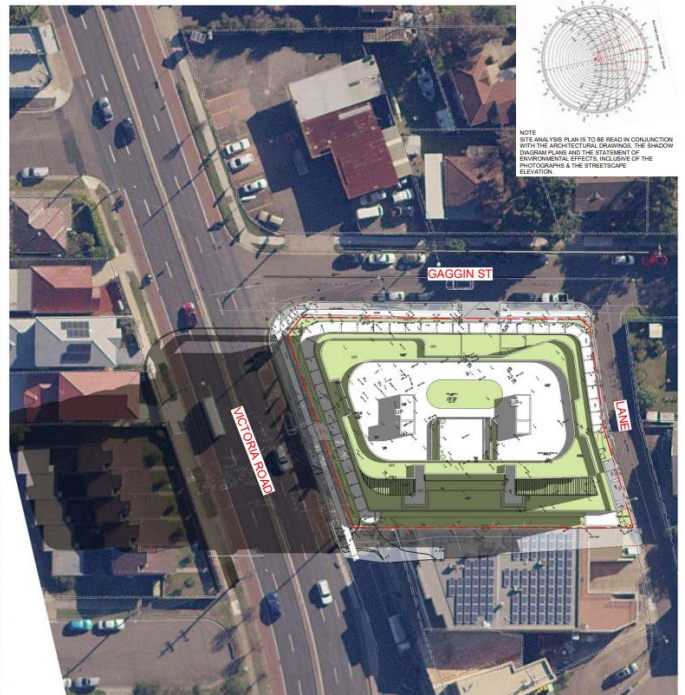
1 SHADOW DIAGRAM @ 9am 21st JUNE
1:300



2 SHADOW DIAGRAM @ 10am 21st JUNE
1:300



1 SHADOW DIAGRAM @ 11am 21st JUNE
1:300



2 SHADOW DIAGRAM @ 12pm 21st JUNE
1:300



Figure 5 Shadow diagrams during the winter solstice

Source: JS Architects

This demonstrates that the proposed FSR variation results in acceptable solar impacts to surrounding properties in a manner consistent with the controls of the PDCP 2011. As the proposal is designed to ensure that neighbouring properties achieve at least three hours of solar access to primary living areas and private open space, the shadow impacts of the proposal are considered to be acceptable.

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

The site is not located in close proximity to any heritage items or heritage conservation areas. The heritage item closest to the site is located at 168 Pennant Street, approximately 250m to the north east of the site which contains a 'cottage', of local heritage significance. The heritage item is well separated from the site by 6 dwelling houses, shops and two medium density dwellings and the site is not visible from heritage item by virtue of the existing curve in Pennant Street and Victoria Road. Due to the distance between the heritage item and the site, the proposal has

regard to the heritage significance of 168 Pennant Street and its immediate setting, which is largely separate from the neighbourhood centre.

Objective (d): to ensure the preservation of historic views,

The site is not located within or near any significant historic view lines. There are no other heritage items or heritage conservation areas to the northern frontage of Victoria Road within 500m of the site and the proposal will not impact upon the appearance of heritage items in the streetscape when viewed towards the site.

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

The site does not share a direct boundary with any low density residential property. The site is separated from neighbouring low density residential areas by neighbouring roads, with Victoria Road to the south, Gaggin Street and a tyre sales business to the west and the laneway to the north. The neighbourhood centre extends to the east of the site and includes the site.

As such, the road carriageways provide significant building separation to low density residential land, which limits the impacts of development on the site to its surrounds. This has a favourable impact to the streetscape, as low density residential development on Victoria Road and Gaggin Streets are well separated from the site, with a significant distance provided well in excess of ADG requirements. This results in acceptable shadowing, privacy and visual impacts to surrounding properties which respects the character and scale of neighbouring residential areas.

Objective (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.

Not applicable to the proposed development. The site is not located within a commercial centre.

3.2.3 Conclusion on clause 4.6(3)(a)

The proposal satisfies the First Method of Wehbe, in that the objectives of the building height standard are achieved notwithstanding non-compliance with the standard.

- The height variation arises from the bonus FSR permitted under the Housing SEPP and the proposed changes to the Housing SEPP as published in November 2022. The proposed built form and height is favourable to a scheme with a compliant height that is blockier and visually bulky resulting from non-compliant setbacks;
- Given the above, the proposal, in varying the height standard as a result of providing affordable housing, seeks to minimise visual and view impacts, loss of privacy and solar access when compared to a compliant scheme;
- The site is well separated from nearby heritage items and preserves historic views; and
- The proposal reinforces and respects the existing character and scale of low density residential areas by virtue of its separation from these areas by roads resulting in acceptable shadowing, privacy and visual impacts to surrounding properties.

3.3 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

3.3.1 Achieving affordable housing outcomes of the Housing SEPP

The proposed variation is consistent with the bonus FSR permitted under the Housing SEPP as well as draft amendments to the Housing SEPP (November 2022) which seek to facilitate affordable housing in the state of NSW. As planning controls for building height are aligned with FSR, it is not possible to deliver a built form at the site that both utilises the affordable housing bonus FSR to maximise the provision of affordable housing, and also comply with the mapped 15 metre height limit.

The Housing SEPP is a State Planning Policy which broadly seeks to advance the strategic objectives of residential development at a State level. These objectives have been developed in the strategic planning process at both State and local level, which has identified the need for affordable housing in the Greater Sydney region. Specifically, Objective 11 of the Greater Sydney Region Plan seeks a more diverse and affordable range of housing and seeks to develop affordable rental housing targets and Objective C5 of the Central City District Plan seeks to provide housing supply, choice and affordability, with access to jobs, services and public transport. These State level directives on

affordable housing have been supplemented by the local strategic planning framework in the Parramatta Local Strategic Planning Statement (LSPS) and Local Housing Strategy.

The LSPS and Housing Strategy identifies that affordable housing is a significant issue within the LGA and specifically seeks to collaborate with the State Government to “make the provision of affordable housing more feasible” through the creation of an affordable housing target scheme. Therefore, the SEPP has been developed to include controls relating to the provision of affordable housing which is identified as an issue within Greater Sydney and the Parramatta LGA.

The proposal provides a built form which is consistent with the broad intent of the strategic planning framework at both State and local level to provide affordable housing. A scheme compliant with the height standard whilst maintaining FSR bonus permitted under the Housing SEPP would result in adverse impacts in relation to visual impact, bulk and scale, privacy and building separation. It is favourable to have a variation in the height standard and a narrower building, with reduced visual impacts and shadows that ‘move’ quickly throughout the day, when compared to a fully compliant scheme.

As such, the proposed variation is entirely consistent with the statutory planning framework which seeks to incentivise the provision of affordable housing under Clause 17 of the Housing SEPP. In turn, the proposal is consistent with the strategic planning framework at both State and local level which also identifies the provision of affordable housing as in the Parramatta LGA and Greater Sydney as a key planning outcome.

3.3.2 Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 1** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(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	The proposal will promote the economic and social welfare of the community by providing additional affordable housing to the locality in a manner consistent with State and local strategic and statutory planning frameworks. This allows individuals, couples, and families to live and work in local communities and provides additional low cost housing near the Parramatta CBD. The ground floor tenancies are accommodated with a contemporary, high quality design which seek to provide local services and business offer to local residents. The proposal will provide affordable housing and retail uses to a currently underutilised site and support increased employment for workers on the site.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The site is oriented to the north and the proposal maximises glazing to this elevation to promote thermal comfort and reduce energy usage.
(c) to promote the orderly and economic use and development of land	The proposal promotes the orderly and economic use and development of land through the development of a mixed use building involving compatible ground floor retail / commercial uses, which will not unreasonably impact upon residential neighbours. This allows for the use of the site to continue to provide local employment opportunities and increases the density of the site commensurate to its location close to Parramatta CBD, nearby transportation linkages and services and facilities in the neighbourhood centre.
(d) to promote the delivery and maintenance of affordable housing	The proposal is directly related to the delivery and maintenance of affordable housing. The site is located in a highly accessible location near the Parramatta CBD and

Object	Comment
	<p>provides affordable housing within walking distance of the Central River City.</p> <p>The delivery of affordable housing is particularly aligned with the strategic vision of the Greater Sydney Region Plan for and the Parramatta Local Housing Strategy, which seeks a rate of 5-10% of new housing in the LGA to be affordable. In contrast, 50% of housing in the proposal is affordable.</p>
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal will not have any impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	<p>No items or areas of built or cultural heritage will be negatively impacted by the proposal.</p> <p>The heritage item closest to the site is located at 168 Pennant Street, approximately 250m to the north east of the site which contains a 'cottage', of local heritage significance. The heritage item is well separated from the site by 6 dwelling houses, shops and two medium density dwellings and the site is not visible from heritage item by virtue of the existing curve in Pennant Street and Victoria Road. The proposal will have minimal heritage impacts on the heritage item and its immediate surrounds.</p>
(g) to promote good design and amenity of the built environment	The proposal will promote good design and amenity of the built environment by exhibiting a contemporary and high-quality design. The proposal is compliant with building setback and separation requirements which ensures visual privacy and built form separation is provided to future neighbouring development. Section 3.2.2 of this variation request demonstrates that the proposal is compliant with the DCP requirements in relation to solar access in providing at least three hours of sunlight to neighbouring private open space and living areas.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, can comply with the relevant provisions of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal however, the proposal has adhered to the required planning processes for the site and scale of development.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

3.3.3 Conclusion on clause 4.6(3)(b)

The proposal and its associated variation in the height standard is fundamentally founded on the reliance on the FSR bonuses in the Housing SEPP through the provision of affordable housing. The State and local strategic planning framework support this and this is reflected in the State planning instrument, the Housing SEPP, providing floorspace bonuses incentivising the provision of affordable housing. Further, the proposal is consistent with the objects of the EP&A Act. As such, there are sufficient environmental planning grounds to justify the variation to the FSR standard.

3.4 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

3.4.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the building height development standard, for the reasons discussed in section 3.1.2 of this report.

3.4.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B1 Neighbourhood Centre Zone, as demonstrated below.

Objective (a): To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

The proposed development provides three retail tenancies on the ground floor which can serve future residents of the site and the immediate surrounds. The proposed uses are permissible with consent in the zone and provide opportunities for local businesses to utilise the tenancies as well as offering additional employment opportunities in the local area.

The proposed additional density on the site results from the provision of additional affordable housing on the site. This also provides additional residents on the site which are capable of utilising the ground floor tenancies as part of their day to day activities.

3.4.3 Overall public interest and conclusion on clause 4.5(4)(a)(ii)

The proposal is consistent with the objective of the B1 Neighbourhood Centre, where the site provides three retail/commercial tenancies on the ground floor which serve the needs of people in North Parramatta. The proposal also achieves the objectives of the FSR standard for the reasons discussed in **Section 3.1.2** of this report. As such, the proposal is in the public interest.

3.5 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

3.5.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the building height development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, the Greater Sydney Region Plan in that it:

- Increases the supply of affordable housing within a highly accessible area within the Parramatta LGA, within close proximity to the Parramatta CBD;
- provides residential accommodation and retail and commercial premises to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- allows for the use of the Site to continue to provide local employment opportunities;
- is well located to public transport connections; and

- does not affect any heritage assets.

3.5.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the additional height is a direct consequence of the need to accommodate the additional FSR bonus provided for affordable housing. The bonuses incentivise affordable housing in the State and seek to provide additional affordable housing stock within a highly accessible area capable of accommodating additional housing. Further, given that the proposal complies with ADG separation and DCP setback requirements and is well articulated, the proposed variation would not give rise to any adverse environmental impacts, particularly in regard to shadowing and visual built form.

3.5.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration by the Director-General before granting concurrence.

4.0 Conclusion

The assessment above demonstrates that compliance with the building height development standard contained in clause 4.3 of the PLEP 2023 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the building height development standard, the proposed development:

- Achieves the objectives of the building height standard notwithstanding the variation to the standard, in that:
 - The height variation arises from the bonus FSR permitted under the Housing SEPP and draft changes to the Housing SEPP as published in November 2022. The proposed built form and height is favourable to a scheme with a compliant height that is blockier and visually bulky resulting from non-compliant setbacks;
 - Given the above, the proposal, in varying the height standard as a result of providing affordable housing, seeks to minimise visual and view impacts, loss of privacy and solar access when compared to a compliant scheme;
 - The site is well separated from nearby heritage items and preserves historic views; and
 - The proposal reinforces and respects the existing character and scale of low density residential areas by virtue of its separation from these areas by roads resulting in acceptable shadowing, privacy and visual impacts to surrounding properties.
- Has sufficient environmental planning grounds in achieving the provision of affordable housing in a manner consistent with the Housing SEPP (and subsequent draft changes) in an accessible location close to the Parramatta CBD and its consistency with the objects of the EP&A Act;
- Is in the public interest as it achieves the objectives of the B1 Neighbourhood Centre zone and the building height development standard; and
- There are no other matters which may prevent the Secretary from granting concurrence.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2023.