

## Amended Clause 4.6 Variation Request Floor Space Ratio

28 Glebe Street, Parramatta  
Brentwood Residential Care Facility

Submitted to City of Parramatta Council  
On behalf of Allity c/o Midson

12 MAY 2022 | 2200731



Tom Goode	Director	tgoode@ethosurban.com	+61 406 428 465
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+61 406 428 465

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This document has been prepared by:

This document has been reviewed by:

Impulse.

Amber Nehal / Eliza Arnott

14 March 2022

Tom Goode

14 March 2022

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Ethos Urban Pty Ltd  
ABN 13 615 087 931.  
[www.ethosurban.com](http://www.ethosurban.com)  
173 Sussex Street, Sydney  
NSW 2000 t 61 2 9956 6952

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## 1.0 Introduction

This amended clause 4.6 variation request has been prepared by Ethos Urban on behalf of Allity c/o Midson. It is submitted to the City of Parramatta (the Council) in support of a development application (DA) for a residential care facility (RCF) at 28 Glebe Street, Parramatta.

As part of the review of the Design Excellence Advisory Panel (DEAP) and Urban Design Comments received from the City of Parramatta Council (Council) on 13 April 2022, the proposed development has been amended to respond to the concerns raised. The amendments have therefore resulted in a minor decrease to the gross floor area and resultant GFA.

Amended Architectural Plans have been prepared by Group GSA and are included at **Appendix A**. The plans illustrate a marginal decrease in overall GFA from that which was previously proposed. The proposed FSR is 1.27:1 (in accordance with the Senior SEPP) or 1.29:1 (in accordance with the PLEP 2011).

Clause 4.6 of the *Parramatta Local Environmental Plan 2011* (PLEP 2011) enables the consent authority 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.

The Floor Space Ratio (FSR) development standard under clause 4.4 of the PLEP 2011 is 0.8:1. For the purposes of development pursuant to the Seniors SEPP, gross floor area means:

*‘the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1,400mm above each floor level) – excluding:*

- (a) excluding columns, fin walls, sun control devices and any elements, projections or works outside the general lines of the outer face of the external wall, and*
- (b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and*
- (c) excluding car parking needed to meet any requirements of this Policy or the council of the local government area concerned and any internal access to such parking, and*
- (d) including in the case of in-fill self-care housing any car parking (other than for visitors) in excess of 1 per dwelling that is provided at ground level, and*
- (e) excluding space for the loading and unloading of goods, and*
- (f) in the case of a residential care facility—excluding any floor space below ground level that is used for service activities provided by the facility.’*

In our opinion a clause 4.6 variation is not necessary in this instance on account of the proposed development is permissible pursuant to the Seniors SEPP, which prevails in the extent of an inconsistency with the PLEP 2011 (as discussed in **Section 2.0**). However, for abundant caution we have prepared a clause 4.6 variation request on a without prejudice basis which comprehensively justifies the proposed maximum FSR for the proposed residential aged care facility.

Clauses 4.6 (3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- (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,

The consent authority’s satisfaction in respect of those matters must be informed by the objectives of clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant controls and to achieve better outcomes for and from the development in question by allowing flexibility in particular circumstances.

This clause 4.6 variation request relates to the development standard for floor space ratio under clause 4.4 of the PLEP 2011 and should be read in conjunction with the amended documentation submitted on 14 March 2022 and other supporting documentation.

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

- The net project traffic generation increase of 5 vehicle trips as a consequence of the increase in beds from the existing development is minimal and is consistent with the planning controls. It will not result in any unacceptable traffic implications in terms of road network capacity to the surrounding street network;
- The immediate surrounds clearly illustrate a transition in built form with the approval of various residential flat buildings and medium density development along Glebe Street, Marsden Street and the Great Western Highway;
- The proposed development has been assessed from a heritage perspective and is not considered to result in any adverse heritage impacts. The proposal adopts compliant setbacks to all boundaries and will provide a high quality architectural design improving the site's interface with adjoining development;
- There are sufficient environmental planning grounds to justify the variation as the proposed FSR is compatible with its context, given the varying nature of buildings within the vicinity, the topographical change and configuration of the site;
- The site provides a substantial public benefit through appropriate building articulation and the provision of an upgraded seniors housing development that responds to the contemporary standards of aged care and increases capacity on an existing aged care site that responds to the growing population and ageing demographic; and
- The proposal is in the public interest since it is consistent with the objectives of the R4 High Density Residential zone.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2011.

## 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 4.4 of the PLEP 2011. Clause 4.4 provides that the floor space ratio of a building on any land is not to exceed the maximum shown for the land on the Floor Space Ratio Map.

Clause 4.4 of the PLEP 2011 is reproduced below in its entirety.

- (1) *The objectives of this clause are as follows—*
  - (a) *to regulate density of development and generation of vehicular and pedestrian traffic,*
  - (b) *to provide a transition in built form and land use intensity within the area covered by this Plan,*
  - (c) *to require the bulk and scale of future buildings to have regard to heritage sites and their settings,*
  - (d) *to reinforce and respect the existing character and scale of low density residential areas.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Floor Space Ratio Map.*
- (2A) ...

## 3.0 Nature of Variation Sought

As detailed in **Section 2.0** above, the site is afforded a maximum floor space ratio of 0.8:1 in accordance with the PLEP 2011. Ordinarily, clause 4.4 would prevent the development of any building on the site which exceeded the mapped FSR. The maximum FSR on the site is shown at **Figure 1** below.



**Figure 1 PLEP 2011 FSR development standard map**

Source: PLEP 2011

The proposed development seeks consent for a total GFA of 4,457.77m<sup>2</sup> (per the Seniors SEPP) or 4,509.8m<sup>2</sup> (per the PLEP 2011) resulting in a corresponding FSR of 1.27:1 (per the Seniors SEPP) or 1.29:1 (per the PLEP 2011).

## 4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the PLEP 2011 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 2011 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 Planning 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; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the PLEP 2011, with respect to the floor space ratio development standard, are each addressed below, including with regard to these decisions.

#### 4.1 **Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances**

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis may be of assistance in applying clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

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 is the **First Method** and **Fourth Method** in establishing that compliance with a development standard is unreasonable or unnecessary and the development standard has been virtually abandoned or destroyed by the Council's own actions in granting development consent for development which exceeds the FSR development standard in the vicinity of the site.

##### 4.1.1 **The underlying objectives or purposes of the development standard**

The objectives of the development standard contained in clause 4.4 of the PLEP 2011 are:

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

The proposal is assessed against the objectives for the height of buildings development standard below.

##### 4.1.2 **The objectives of the standard are achieved notwithstanding non-compliance with the standard**

###### ***Objective (a): to regulate density of development and generation of vehicular and pedestrian traffic,***

The proposed development will allow for the redevelopment and upgrade to the existing residential care facility to ensure it meets modern day standards of aged care, provides additional capacity to meet the needs of the growing and ageing population and provides a development that is commensurate with the site's location and surrounding built form.

There is a clear need to undertake upgrades to the existing building as despite significant investment on the site over the years to provide more common and appropriate upgrades for 100+ beds, it is now operating at only 78

beds and is becoming unviable. Further, the fabric of the building isn't suitable to allow Allity to deliver on their vision to change the face of aged care and provide a home like environment.

Therefore, the capacity of the site to meet future needs requires that there be additional floor space. The additional floor space will facilitate a new high quality architecturally designed residential care facility, that will contribute to the streetscape without impacting on any adjoining development. It will allow for appropriate operations to take place on site, particularly where such aged care facilities are being designed in line with clinically, sub-acute hospital-like models of care.

As discussed in the Traffic Impact Assessment prepared by Varga dated 22 October 2021, while the proposal will result in a slight increase in traffic generation from the increase in beds and staff numbers (by approximately 5 vehicles per hour), this is considered minimal and is consistent with the planning controls which apply to the site. Further, the increase in vehicular and pedestrian traffic will not result in any unacceptable impacts in terms of road network capacity and rather, will increase activation in and around the site. Broadly, aged care has a far lesser traffic generation than a purely residential land use.

***Objective (b): to provide a transition in built form and land use intensity within the area covered by this Plan,***

As previously noted, the proposed development will result in a building on the site with a total FSR of 1.29:1 (per the PLEP 2011). The proposed increase in total floor area envisaged by this development application is commensurate with the existing character of the area and does not demonstrate an overdevelopment of the site in terms of building mass, height or form as shown in **Appendix A**.

The proposed development has been designed to incorporate an appropriate transition in built form, by modulating the building setbacks to ensure there is no adverse impact to adjoining residential development. In particular, the built form adopts an 'H' configuration with two wings located off a deep central core which assist in reducing any perceived bulk and scale when viewed from the east and west. The amended proposal also removes six (6) beds on the third level to ensure a recessed built form and appropriate reading to the building from Glebe Street.

The proposal does not result in an uncharacteristic development for the area, where there is a range of medium-high density development which far exceed the built form controls prescribed under the PLEP 2011. It is also located in the R4 High Density Residential Zone.

Along the Great Western Highway, densely developed towers occupy the allotments and similar 3 storey plus semi basement residential flat buildings are located on Glebe Street. Within a highly urbanised area it is noted that some view loss and overshadowing from development is unavoidable however, it is generally accepted by councils where development with a significant public benefit in a strategic centre is not stifled. Notwithstanding this, the impacts of the proposal are within Council's standards.

The proposed maximum FSR is considered to be appropriately proportioned and distributed across the site so as to not result in any adverse impacts to adjoining properties.





**Figure 2** CGI of proposed development as viewed from Ollie Webb Reserve

Source: Group GSA

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

The proposed development has had regard to the adjoining development and in particular the heritage listed items proximate to the site at 74-86 Marsden Street and 41 Great Western Highway. A Heritage Impact Statement (HIS) was submitted with the original DA and prepared by John Oultram Heritage and Design which details how the proposed development responds to the adjoining heritage items.

From a heritage perspective, the HIS confirmed the proposed development presents a well-considered response and adopts a well articulated development without resulting in any impact on heritage items within the vicinity of the site.

***Objective (d): to reinforce and respect the existing character and scale of low density residential areas.***

The site is located within a densely urbanised area, just south of the Great Western Highway where there are a range of built forms and typologies. The proposed development, inclusive of the variation, achieves the objective in that it has been modulated and configured to ensure any perceived bulk and scale when viewed from the east and west is minimised as shown in **Figure 2** above.

The proposal adopts a recessive roof form, sympathetic material palette and considered architectural configuration fronting Glebe Street and at the eastern and western elevations responding to the quieter and local nature of the adjoining properties. With the improved interface to Glebe Street and the adjoining properties this will provide a development that will ensure the building continues to positively define the existing and future character of development within the R4 High Density Residential zone. The proposal also appropriately retains existing street trees along Glebe Street which essentially 'cloak' the built form.

Notwithstanding, the provisions of the SEPP allow a RCF land use in the zone, which results in an inherently different built form from a standard residential land use.

### 4.1.3 Summary

In summary, the proposed development meets the objectives of the standard as it:

- Does not result in any adverse traffic generation impacts to the surrounding street network or pedestrian traffic;
- Responds appropriately to surrounding development and the transitioning nature of the area as well as the R4 High Density Residential zone;
- Is of a high architectural quality; and
- Complies with the objectives of the R4 High Density Residential zone and the envisaged nature of development within the zone.

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

Clause 4.6(3)(b) of the PLEP 2011 requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

*That there are sufficient environmental planning grounds to justify contravening the development standard.*

The environmental planning grounds relied on in the written request under clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In this instance, the relevant aspect of the development is for additional floor space that exceeds the development standard under the PLEP 2011. It is also pertinent to note that the proposed development is pursuant to the Seniors SEPP and the two environmental planning instruments provide differing interpretations for GFA.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the floor space ratio control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

### 4.2.1 Ground 1: Visual Impact and Built Form Transition

The proposed maximum FSR will not result in any adverse environmental impacts. As shown in the Architectural Plans at **Appendix A**, the proposed built form illustrates an appropriate transition in building bulk and scale down from the Great Western Highway to the north and along Glebe Street.

The proposed development is not considered to have an adverse visual impact when viewed from adjoining development or the public domain. Rather the proposal will improve the building's presence on the site by high quality architectural form and greater interaction with the public domain. As the proposed development is located on a sloping topography any additional bulk and scale has been appropriately integrated with the design of the building where Level 3 adopts a recessed form within the building height. Specifically, Level 3 is setback 10.4m from the front boundary line. This proposed roof form acts as an appropriate form of transition from the taller buildings and higher densities along the Great Western Highway, the nearby Parramatta CBD and the lower densities and open spaces to the south of the site. The proposed form will complement the pattern of development along Marsden Street whilst enhancing the relationship of development adjoining the site.

### 4.2.2 Ground 2: Solar Access and Overshadowing

Overshadowing analysis has been undertaken by Group GSA and is included at **Appendix A**. While it is unavoidable that any increase in building bulk will result in some additional overshadowing, the impact of this is considered negligible and acceptable when looking at the broader public benefits associated with the proposed development.

The overshadowing analysis illustrates that the proposed development will result in some increase in shadow from that which currently exists to Glebe Street and Ollie Webb Reserve and adjoining development on the eastern boundary of the site. Ollie Webb Reserve has an area of 58,320m<sup>2</sup>. As shown at **Figure 3** below, the proposed development has a minor shadow impact on Ollie Webb Reserve at 9am that is gone by 10am.

In accordance with the PDCP 2011, the proposal aligns with the Objectives and Design Principles of 3.3.5 – Solar Access and Cross Ventilation in that it aims to minimise the extent of shadow impact onto the parkland through compliant setbacks and a modulated and well articulated built form. It is also noted that the proposal will result in marginally less overshadowing than what would otherwise be cast by a compliant built form as shown below and at **Appendix A**.



2 PROPOSED - 9:00 AM - 21ST OF JUNE  
NTS



4 PROPOSED - 10:00 AM - 21ST OF JUNE  
NTS

**Figure 3: Revised Overshadowing Plans**

Source: Group GSA

While it is noted that the proposal results in additional shadow from that which currently exists, the built form adopts setbacks that are consistent with the PDCP 2011 provisions and the ADG while also including substantial deep soil zones and privacy measures to further improve the interface of the development with adjoining properties and allow for appropriate amenity throughout all hours of the day.

### 4.2.3 Conclusion

There are considered to be sufficient environmental planning grounds to justify contravening the development standard as:

- The proposed built form will not result in any adverse amenity impacts to public open space or adjoining residential development, where all dwellings will continue to receive a minimum of 3 hours solar access during the early morning-midday period;
- The proposal adopts setbacks consistent with the relevant provisions of the PDGP 2011 and the ADG to allow for additional amenity to adjoining dwellings;
- The proposed built form has been well articulated in response to the slope of the site and surrounding development by including a recessive roof formation to better complement development along Marsden Street;
- The proposed development retains the majority of street trees along Glebe Street to further minimise any perceived bulk and scale from the public domain; and
- It is not uncommon or unreasonable to expect some minor GFA and FSR variation in R4 High Density Residential zones where development proximate to the site is changing.

### 4.3 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

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, in **Table 1** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the FSR development standard.

**Table 1 Assessment of proposed development against 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 proposed development will promote the economic and social welfare of the community through the introduction of a tangible improvement in building form in the area that will respond appropriately to the local heritage items while delivering additional seniors housing in the Parramatta LGA.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposed development will facilitate ecologically sustainable development by allowing an appropriate development on an existing site and in a location that will have no negative impact on environmental and social considerations and will support the economic health of the City of Parramatta.
(c) to promote the orderly and economic use and development of land,	The proposed development will promote the orderly and economic use of land by allowing the redevelopment of the site to suit the operational requirements of modern day standards for aged care and to provide a financially viable built form to suit the vision of Allity. The development will make improvements to the site without resulting in any adverse impacts to adjoining properties.
(d) to promote the delivery and maintenance of affordable housing,	<p>While the proposed development is not defined as affordable housing, the proposal will provide housing to residents known as supported or concessional. Residential Care Places have conditions imposed under section 14.5 of the Aged Care Act 1997. One condition is that residential aged care places must be used to provide care to supported residents to at least the supported resident ratio for the region. On the site, the current supported ratio is 29.8% for the region however the actual supported ratio at the facility is far above the minimum requirement at 77.8%. Clearly, this part of the community is underserved by other competitors in Parramatta and Allity will continue to aim to reserve over 50% of the beds at the Brentwood facility for supported residents.</p> <p>Therefore, while the proposal is not defined as affordable housing under the relevant environmental planning instrument, it does support residents with low means (assets or income) and will contribute to the diversity and capacity of housing within the Parramatta LGA.</p>

Object	Comment
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed development will have no impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposed development will not result in any impact to surrounding heritage items. The proposal will replace an existing building that is uncharacteristic and unsympathetic to the surrounding context and to the local heritage buildings and will be replaced with a more appropriate built form.
(g) to promote good design and amenity of the built environment,	The proposed development has been designed by renowned architects who have specifically worked in the aged care sector with the design informed by the pre-DA meeting held with Council. The development promotes good design in this regard. The proposed development will vastly improve resident experiences on site. The proposed development will also improve pedestrian amenity along Glebe Street through an improved interface and presence activating the street frontage and through the provision of appropriate landscaping and building materiality responding to the CPTED principles.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes 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 proposed development
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with the requirements of Council's DCP.

#### 4.4 Clause 4.6(4)(a)(ii): the proposed development will be in the public interest

This requirement requires consistency 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.

##### 4.4.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in **Section 4.1.2** of this report.

##### 4.4.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the R4 High Density Residential zone, as set out in **Table 2** below.

**Table 2 Consistency with the objectives of the R4 High Density Residential zone**

Objective	Comment
<i>To provide for the housing needs of the community within a high density residential environment.</i>	The proposed development has had regard to the housing needs for the community through providing more senior housing in the Parramatta region where the senior population is forecasted to grow. The proposed development provides a community benefit whilst providing no adverse environmental impacts and recognises the growing population and changing demographics.
<i>To provide a variety of housing types within a high density residential environment.</i>	The proposed development provides a new residential aged care facility on an existing site, within a high-density residential zone, therefore providing a variety of housing types in the area.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development is within proximity of several services and facilities in which provides the day to day needs of the residents. The



Objective	Comment
	proposed development is also within close proximity of green space which also aligns with the provisions of the Seniors SEPP.
<i>To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.</i>	The proposed development seeks to provide 100 aged care beds on the site, increasing the existing capacity by 22. The proposal is pursuant to the Seniors SEPP and corresponds with the relevant provisions to provide a development that appropriately supports existing and future residents within the facility.
<i>To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.</i>	The proposed development is seniors housing which will allow for a range of activities in relation to the senior demographic to occur from the development. These activities will not adversely affect the amenity of the neighbourhood.

#### 4.4.3 Overall public interest

The proposed development represents an innovative and community-oriented approach to the shortfall of senior housing especially with the forecasted growth of seniors by 64%<sup>1</sup>. It seeks to replace the existing development that contributes little in terms of public domain and does not meet modern day aged care standards.

The proposed development will improve the built form outcome on the site by establishing a building envelope that responds to its surrounding context and existing built form along Marsden Street, Glebe Street and Campbell Street.

The proposed FSR exceedance will be imperceptible to the public domain and there will be no adverse solar or privacy impacts to adjoining development. As such, the proposal will not interfere with the public interest but rather provide an improved built form outcome and increased capacity that directly responds to Parramatta's strategic planning framework which has clearly identified a growth in the ageing population and need for additional seniors housing as discussed in the SEE prepared by Ethos Urban.

#### 4.5 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 Planning 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 Planning Secretary before granting concurrence.*

These matters are addressed in detail below.

##### 4.5.1 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 FSR development standard does not raise any matter of significance for State or regional planning. The variation to the development standard will not contravene any overarching State or regional objectives or standards or have any effect outside of the site's immediate area.

##### 4.5.2 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. The proposed FSR does not result in an overdevelopment of the site and the proposal generally responds to built form of existing development within the vicinity of the site. There is no public benefit in maintaining the development standard as the proposal will allow for an economically viable development that will provide 100 aged care beds, responding to the changing demographics for the area.

<sup>1</sup> City of Parramatta - Local Housing Strategy 2021

Accordingly, it is not considered that there would be any public benefit for the FSR development standard under the PLEP 2011 to be complied with particularly as the key planning issues deriving from additional floor space including privacy, views and overshadowing have been appropriately resolved through high quality architectural design and appropriate building separation.

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

We are not aware of any other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

## **5.0 Conclusion**

The assessment above demonstrates that compliance with the FSR development standard contained in clause 4.4 of the PLEP 2011 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 economic use of the land in an appropriate manner, whilst also allowing for a superior outcome in planning and design terms. This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum FSR development standard, that:

- The development as proposed will deliver a superior built form outcome in consideration of the site's location and the surrounding buildings, whilst providing a renewed residential aged care facility that has responded to the modern day standards for seniors housing, creating a viable development;
- The development as proposed will improve the site's relationship with the public domain and the pedestrian environment along Glebe Street;
- Compliance with the development standard would be both unreasonable and unnecessary in this instance because the development is able to fully satisfy the objectives of the R4 High Density Residential Zone and the objectives of the maximum FSR development standard;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents within the vicinity of the site that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.

The proposed variation of the maximum floor space ratio development standard does not result in an over development of the site or any adverse impacts on the public domain. The proposed redevelopment of the site for the purposes of an upgraded residential aged care facility is commensurate with the built form of surrounding development and characteristics in the locality. It is also consistent with the design approach applied to other commercial and residential buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the FSR development standard is considered appropriate in these circumstances. Despite the numerical non-compliance with the 'maximum FSR' development standard, the proposed development is considered to satisfy the objectives of the development standard and the R4 High Density Residential zone.

The proposal will provide significant social and environmental benefits particularly through the improved amenity for future residents, retention of street trees and inclusion of substantial deep soil planting. Further, the proposal will provide an appropriate response to the needs for aged care to be renewed and redeveloped to meet modern day standards, in line with the growing and ageing population. On this basis, the clause 4.6 variation is considered well founded and should be supported and the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2011.