

## Clause 4.6 Variation Request Height of Building Development Standard

28 Glebe Street, Parramatta  
Brentwood Residential Aged Care Facility

Submitted to City of Parramatta  
On behalf of Allity

14 March 2022 | 2200731



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## 1.0 Introduction

This amended clause 4.6 variation request has been prepared by Ethos Urban on behalf of Allity. 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.

Proposed amendments to DA460/2021 have been made as a result of the ongoing meetings and discussions held with Council (including Council's development assessment planner and civil engineer) as well as internal project team meetings. Amended Architectural Plans have been prepared by Group GSA and are included at **Appendix A**. The plans illustrate an increase in building height from the initial RFI, from 13.13m to 13.65m (under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP) or 16.12m under the *Parramatta Local Environmental Plan 2011* (PLEP 2011).

Clause 4.6 of PLEP 2011 enables the consent authority to grant consent for a 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 Height of Buildings (HOB) development standard under clause 4.3 of the PLEP 2011 is 11m. For the purpose of development pursuant to the Seniors SEPP, height means:

***Height** in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.*

It is noted that the proposed development deviates from the PLEP 2011 maximum building height control by 5.12m with a height of 16.12m at its worst point.

The change in overall building height is a direct result of recommendations from Council's engineers regarding flooding requirements where the habitable floor levels must be no lower than 1% AEP plus 500mm freeboard, however the design has been amended to delete a section of building adjacent Glebe Street, at the lowest part of the site. The 1% AEP was noted to provide a level of 19.75RL, giving a minimum habitable floor level of 20.25 AHD. The proposal has a finished floor level of 20.3 AHD.

The height control prescribed in the PLEP 2011 cannot be taken as the jurisdictional bar for development consent or refusal, in accordance with section 4.15 of the EP&A Act as the proposal is made pursuant of the Seniors SEPP. For abundant caution we have prepared this clause 4.6 variation request on a without prejudice basis which comprehensively justifies the proposed maximum HOB for the proposed RACF.

Clauses 4.6 (3) of the PLEP 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:

- The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- 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
- 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 Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 5 May 2021, the amended proposal described in the Response to Request for Additional

Information dated 22 October 2021 and the second amended proposal described in the Response to Request for Additional Information dated 14 March 2022.

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

- There are sufficient environmental planning grounds to justify the variation as the variation is a direct result of mitigating flooding impacts as raised by Council's civil engineers and is compatible with its context, given the varying nature of buildings within the vicinity, the topographical change and configuration of the site;
- The site slopes from north to south, with the lowest part fronting Glebe Street. The design has been amended to delete the main built form at this frontage so as to present as a 3 storey form, befitting of the medium density zone.
- The site provides a substantial public benefit through the provision of an upgraded seniors housing development that responds to the modern day 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 and provides an appropriate built form and building articulation.

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 4.3 of the PLEP 2011. Clause 4.3 provides that the height of a building on any land is not to exceed the maximum shown for the land on the Height of Buildings Map.

Clause 4.3 of the PLEP 2011 is reproduced below in its entirety.

*(1) The objectives of this clause are as follows—*

- (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development*
- (c) to require the height of future buildings to have regard to heritage sites and their settings,*
- (d) to ensure the preservation of historic views,*
- (e) to reinforce and respect the existing character and scale of low density residential areas,*
- (f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes*

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



It is noted that under the Seniors SEPP definition, the plant room and lift overruns do not form part of the ceiling of the topmost floor and are therefore excluded from the calculation of height.

We note that the standard in clause 48 does not preclude the granting of development consent, but rather if the standards are breached then the proposal would require a merit assessment under section 4.15 of the EP&A Act. This is consistent with the approach taken by *Eastern Suburbs Leagues Club Pty v Waverley Council [2019] NSWLEC 130, Moore J (in Class 1)*<sup>1</sup>.

**Figure 2** below demonstrates the PLEP 2011 height plane and where the proposal results in a noncompliance to the building height control by 5.12m which is localised to southern portion of the site as a result of the sloping topography.



**Figure 2** East elevation showing height plane and proposed development

Source: Group GSA

## 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 height of buildings 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 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 NSLEP 2013 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 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 HOB 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 4.3 of the PLEP 2011 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*

While the height control prescribed in the PLEP 2011 cannot be taken as the jurisdictional bar for development consent or refusal, in accordance with clause 4.15 of the EP&A Act, we have assessed the proposed height on its merit with regards to the LEP standard and its objectives below.



#### 4.1.2 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 site is located between the interface of significant scale along the Great Western Highway to the immediate north and east of the site and lower scale development along Marsden Street to the east and Glebe Street, which also sits lower than development along the Great Western Highway as a result of the topographical change. The R4 High Density Residential zone objectives and the approved development along the Great Western Highway reflects the desire to create an appropriate transition.

Importantly, the proposal will not result in a significant change in the land use intensity, where the proposal seeks to upgrade an existing aged care site to meet modern day standards and respond to population and demographic changes where there is a necessity for aged care beds in the LGA. It is important to note that the height increase is to ensure that all flooding risk can be mitigated as highlighted by Council's civil engineer.

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

The proposed development has been designed to minimise overshadowing on the surrounding locality by considering the minimum setback controls as provided by the Apartment Design Guide (ADG) and the PDCP 2011. Importantly, the proposed height non-compliance of 5.12m will still allow the adjoining properties to receive the minimum requirement of 3 hours solar access during the early to mid-morning period as discussed in the SEE and shown in the Architectural Plans at **Appendix A**. It is further noted that the proposal will result in marginally less overshadowing than what would be cast by a compliant building envelope.

The proposed exceedance does not result in any significant additional overshadowing of public areas from that which would ordinarily be expected, other than the road reserve and a portion of the north-eastern corner of Ollie Webb Reserve in the early morning period (9am). As a result of greater building setbacks from that which currently exist and the building modulation adopting an 'H' formation, the proposal ensures any perceived bulk and scale is minimised from adjoining development and the public domain and the proposal is considered to provide an appropriate transition in built form down from the Great Western Highway.

The appropriate transition in built form has been further emphasised through a design amendment which deletes building form at the lowest part of the site and adopts a recessed form within the building height at Level 3. This allows any additional bulk and scale to be recessed from Glebe Street.

The proposal will improve the relationship to adjoining properties and the public domain through complaint setbacks to all boundaries as well as substantial landscaping and privacy measures. Specifically, the proposal adopts a setback of 7m to the front boundary line and 10.4m to Level 3. It also seeks to maintain majority of the street trees along Glebe Street providing a visual buffer between the development and public domain.

The built form has been formulated in response to the site's context, underlying planning controls, and the desire to optimise the amenity for the adjoining properties and future residents. Through its formation the proposed development adopts deep articulation of the central core. The use of varied materiality that is commensurate to adjoining development will ensure the development contributes to the streetscape whilst breaking up the building massing and presenting a development that provides significant improvements from that which currently exist.

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

The proposed development has had regard to the heritage items located in the vicinity of the site including the single storey brick dwellings located at 78-86 Marsden Street which are identified as local heritage items under the PLEP 2011.

As discussed in the Heritage Impact Statement prepared by John Oultram Heritage and Design (refer to **Appendix Q** within the original lodgement package), the proposed development will not result in any significant impacts to the heritage significance of the items and the development provides a well-considered response to the provision of seniors housing. Specifically, the Statement confirms the redevelopment of the site provides a well articulated response and an improved presentation to the street, therefore having little to no impact on the setting of the heritage items.

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

The site sits in an area of mixed character in terms of scale and architectural form and the increase in building height will not result in the loss of any historic views. The proposal is for the redevelopment of the site and while it will result in a minor height noncompliance this will not impact any historic views to or from the site.

The proposed development sits well below the higher density development to its north at 88 Marsden Street.

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

The existing character within Glebe Street has varied scales and architectural forms with few single storey houses from the Inter War period as well as some town house and residential flat building developments, however it is in a medium density zone.

The proposed development will add to the mixed character of the area through providing housing diversity, whilst respecting the neighbouring developments and open space. It is further noted that the site is located in the R4 High Density Residential zone and the proposal will directly align and respond to the objectives of the zone by increasing capacity for seniors housing on the site and responding to the need to provide a range of housing typologies within a high density residential environment.

**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**

The site is located just south of the Parramatta CBD commercial core and is within an R4 High Density Residential zone. Notwithstanding, the proposal has had regard to adjoining development adopting a modulated built form that will increase setbacks to neighbouring residential properties and allow for appropriate solar access.

**4.1.3 Summary**

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

- Is consistent with its context in terms of height;
- Responds appropriately to surrounding development and the character of the built form;
- Minor encroachment of shadows to the adjacent open space areas to the south are limited to the early morning period only during the Winter Solstice;
- Is of a high architectural quality and the proposed roof form will better complement the existing Marsden Street elevation being recessed back; and
- Directly aligns and complies with the objectives of the R4 High Density Residential 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 building height 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 of the maximum building height control.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height 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

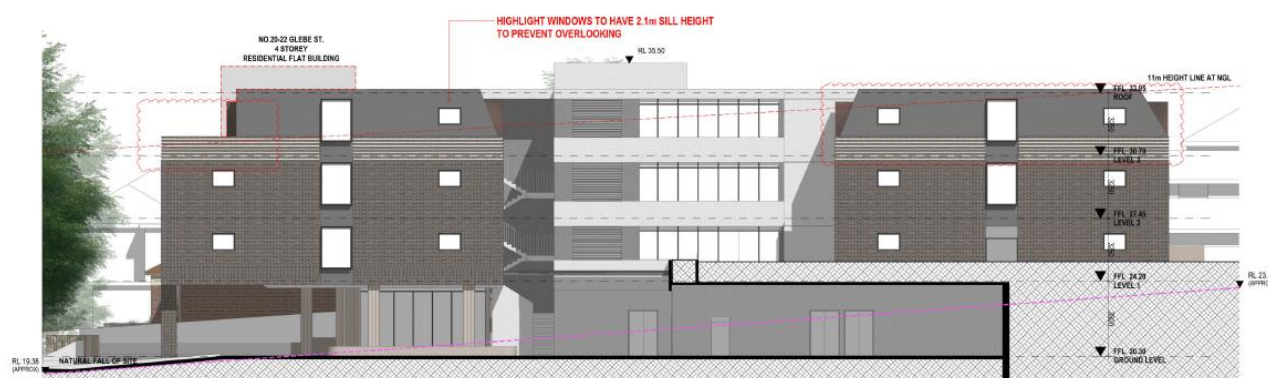
As shown in the Architectural Plans and discussed in **Section 3.1**, the proposed development appropriately steps down from the higher density development located on Marsden Street and the Great Western Highway. The Architectural Plans included in **Appendix A** and in **Figure 3** and **4** below, clearly illustrate how the proposal responds to the form of adjoining development and R4 zone where the development steps down in height from the Great Western Highway whilst also responding to adjoining development on Glebe Street where the built form comprises a range of 3 storey plus basement up to five storey residential flat buildings.

From Glebe Street it provides a recessive third storey to respond to the surrounding context and slope of the site. The trees as seen in **Figure 3** also screen the development and limit the visual impact on the streetscape scale.



**Figure 3** Proposed development – south elevation fronting Glebe Street and adjoining development along the Great Western Highway at the rear

Source: Group GSA



**Figure 4** Proposed development – east elevation and adjoining development on Glebe Street

Source: Group GSA

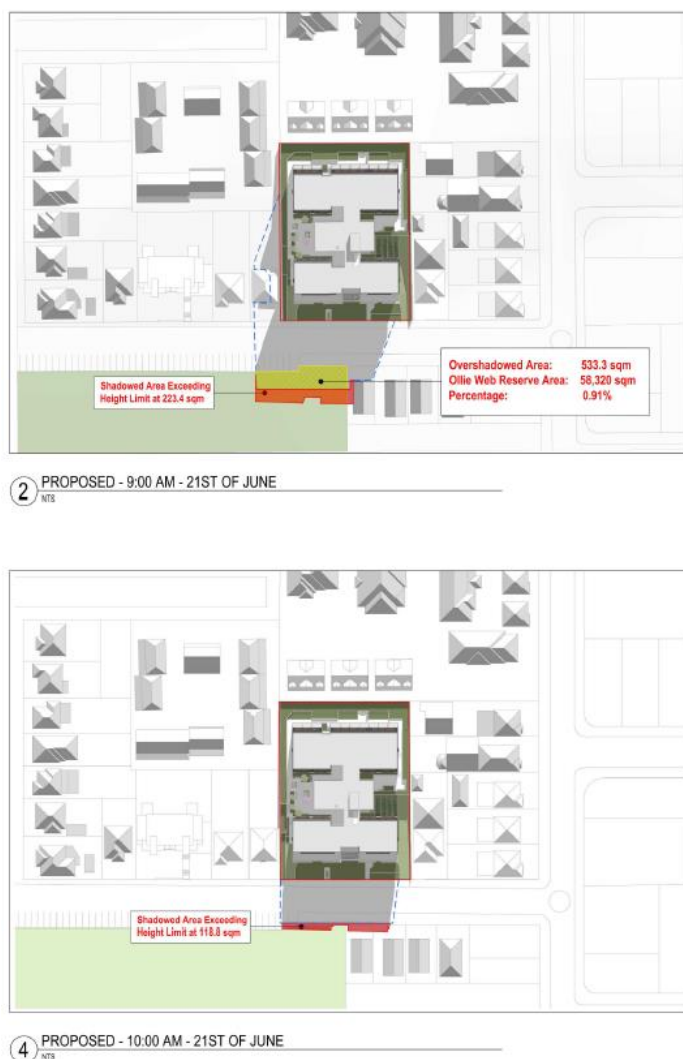
#### 4.2.2 Ground 2: Solar Access and Overshadowing

There is approximately a 2-3m fall from the north to the south towards Ollie Webb Reserve. The development has been carefully designed to step down with the slope of the site; however, the topography has necessitated a protrusion in the southern portion where the site fronts Glebe Street. This protrusion is minor in nature given it only comprises a portion of the site and will not substantially result in any additional overshadowing or any other impacts to the amenity of the surrounding buildings or public domain.

Importantly, the proposal has deliberately adopted a modulated built form and setbacks that respond to the controls provided in the ADG and PDCP 2011 to ensure that adjoining development continue to receive adequate solar access. Further to this, the design has been amended to recess the third level on Glebe Street, therefore improving the reading of the development from the streetscape and minimising overshadowing impacts.

The overshadowing analysis prepared by Group GSA and included at **Appendix A** illustrates the existing and proposed overshadowing. The analysis clearly illustrates that all adjoining properties will receive a minimum of 3 hours sunlight during the early to mid morning period on 21 June and Ollie Webb Reserve immediately opposite the site will only be overshadowed in the north-eastern corner for one hour during the early morning period during lower times of use.

As seen in **Figure 5**, the overshadowing to the reserve during these periods will be approximately will overshadow 533.3m<sup>2</sup> at 9am and will overshadow 118.8m<sup>2</sup> at 10am. All of the reserve will continue to receive adequate solar access during the winter solstice from 10am onwards.



**Figure 5: Revised overshadowing plans**

Source: Group GSA

### 4.2.3 Conclusion

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

- Whilst there is some overshadowing of the reserve to the south, it occurs to only 375.5m<sup>2</sup> of the overall park and has no effect after 9am in the Winter Solstice;
- The proposed development does not inflict adverse effects on surrounding buildings or public amenities;
- The site is positioned to provide appropriate separation distances between adjoining development and is oriented to protect privacy to adjoining residents;
- It is not uncommon or unreasonable to expect some minor height variation in dense urban environments particularly where the objectives of the zone envisaged such development;
- The building complies with the front, side and back setbacks; and
- The proposed materiality and configuration of the site provide an improved urban design outcome for the site and its surrounds.



### 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 to 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 height of buildings development standard.

**Table 1 Assessment of proposed development against the Objects of the EP&A Act**

Object	Comment
<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 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.
<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 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.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposed development will promote the orderly and economic use of the 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.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	<p>While the proposed development is not defined as affordable housing, the proposal will provide housing to residents known as concessional beds. 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 support 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>
<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 will have no impact on threatened species or ecological communities.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	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 with a more appropriate built form.
<i>(g) to promote good design and amenity of the built environment,</i>	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.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.

Object	Comment
(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 height of buildings 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 1** 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>	<p>The proposed development has had regard to the housing needs for the community through providing more senior housing in the Parramatta region where the seniors population is forecasted to grow.</p> <p>The proposed development provides a community benefit whilst providing no adverse environmental impacts and recognises the growing population and changing demographics.</p> <p>Importantly the proposal provides a high level of concessional (or affordable) beds within the development.</p>
<i>To provide a variety of housing types within a high density residential environment.</i>	<p>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.</p> <p>Some level of impact, particularly overshadowing is to be expected in high density residential areas.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<p>The proposed development is within proximity of several services and facilities providing for the day to day needs of the residents. The proposed development is also within close proximity of green space which also aligns with the provisions of the Seniors SEPP.</p>
<i>To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.</i>	<p>The proposed development seeks to provide 100 aged care beds on the site, increasing the existing capacity by 22.</p> <p>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.</p>
<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>	<p>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.</p>



#### 4.4.3 Overall public interest

The proposed development represents an innovative and community-oriented approach to the shortfall of seniors housing where it is forecasted that the seniors population will grow 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 height of building 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.

#### 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 height of buildings development standard does not raise any matter of significance for State or regional planning.

##### 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 height of building 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 108 aged care beds, responding to the changing demographics for the area.

Accordingly, it is not considered that there would be any public benefit for the HOB development standard under the PLEP 2011 to be complied with particularly as the key planning issues deriving from additional height 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.

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

## 5.0 Conclusion

The assessment above demonstrates that compliance with the maximum height of buildings development standard contained in clause 4.3 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 height of building development standard, that:

- The increased height is a direct result of recommendations from Council's engineers regarding flooding requirements where the habitable floor levels must be no lower than 1% AEP plus 500mm freeboard. The 1% AEP was noted to provide a level of 19.75RL, giving a minimum habitable floor level of 20.25 AHD. The proposal has a finished floor level of 20.3 AHD and therefore mitigates flooding risks that pose the proposed development
- 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 aged care, 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;
- The shadow impact is to only 533.3.m<sup>2</sup> (0.91% of the overall reserve) of Ollie Webb Reserve to the south, until 10am in the Winter Solstice. This is not an unacceptable impact and in line with Council's DCP requirements;
- 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 height of building development standard; and
- The development standard has been virtually abandoned in 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 height of building 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 height of buildings development standard is considered appropriate in these circumstances. Despite the numerical non-compliance with the 'maximum height' 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.