

# **Attachment E**

<p><b>Clause 4.6 Variation Request – Floor Space Ratio</b></p>
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## Clause 4.6 Variation Request – Floor Space Ratio

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### 1. Introduction

This report contains a variation to a development standard in accordance with Clause 4.6 of the *Sydney Local Environmental Plan 2012* (SLEP 2012) which provides the framework for consideration of proposed variations to development standards.

The variation sought under Clause 4.6 of the LEP has been prepared in accordance with the Land and Environment Court Ruling *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The case further clarified the correct approach of Clause 4.6 requests including that the clause does not require a development with a variation to have a better or neutral outcome.

Clause 4.4 of SLEP 2012 specifies that the floor space ratio (FSR) of a development may not exceed the maximum FSR specified on the relevant Floor Space Ratio Map. The site is subject to a base FSR limit of 1.75:1, with an additional FSR of 0.5:1 achievable for developments that provide community infrastructure. The proposed development exceeds the maximum FSR allowance.

### 2. Background

D/976/2019 for the comprehensive redevelopment of the former Council depot at 94-104 Epsom Road, Zetland (“the subject site”) was lodged with City of Sydney on 3 September 2019. The DA was exhibited from 11 September to 11 October 2019. The subject site is located within the Epsom Park area of Green Square. This area has been identified for redevelopment to support high density, mixed use development and the site has been zoned B4 mixed use to facilitate its development for this purpose. The Epsom Park precinct has been the subject of extensive masterplanning. Site specific building envelope controls for various land parcels within the Epsom Park area, including the subject site, are contained within the *Sydney Development Control Plan 2012*.

Consistent with the planning controls that apply to the site, the proposed development involves the construction of a new, mixed use development that will span across two integrated land parcels, separated by a public road (Rose Valley Way), the construction of which forms part of the DA. Both land parcels will accommodate residential apartments and retail space with vehicular access driveways off Rose Valley Way.

The key features of the development for which consent is sought and that form the basis of the DA are as follows:

- **Southern Block:** The smaller of the two land parcels accommodates a row of terrace style housing, addressing Rose Valley Way, and a larger multi-storey building, addressing Epsom Road, with retail at ground floor level and residential apartments above; and
- **Northern Block:** The larger land parcel accommodates a row of terrace style housing, addressing Rose Valley Way, and larger multi-storey buildings, addressing George Julius Avenue (future road) and Gunyama Park. The building addressing Gunyama Park has retail at ground floor level with residential apartments above. The remaining buildings comprise residential apartment buildings.
- **Public Roads:** As part of the redevelopment of the site a new public road will be constructed, comprising an extension of Rose Valley Way, to provide a through connection from Joynton Avenue to the newly created George Julius Avenue, the construction of which also forms part of this DA. The roads will be dedicated to Council upon completion of the project.

Prior to lodging the DA, a competitive design process was undertaken to inform the design of the future development of the land. The purpose of the design competition was as follows:

- To satisfy the requirements of Clause 6.21: The development involves buildings that are in excess of 25 metres and also has a capital investment value of more than \$100,000,000 and is therefore subject to Clause 6.21 of *Sydney Local Environmental Plan 2012* which requires a design competition.
- To achieve bonus floorspace allowable under Clause 6.21: D/976/2019 seeks additional floorspace, over and above the base FSR allowance permitted for the site pursuant to LEP Clause 6.21 which permits up to an additional 10% floor space or height allowance for developments which have been the subject of a competitive design process.
- To vary the site specific DCP building envelope layout that applies to the subject site: Pursuant to Clause 5.3.4(4) of the Sydney DCP 2012, alternate building layouts may be considered within each street block provided they respond to the Epsom Park Urban Strategy and Principles, and demonstrate better amenity for the development, neighbouring developments and the public domain. Detailed objectives for competitors to explore alternate built form options to those in the Sydney DCP 2012 are to be provided in the Competitive Design Process Brief. The proposed development involves an alternative, superior, design and layout to that presented in the DCP.

The scheme design presented in D/976/2019 is consistent with the winning design competition entry and the architectural plans have been documented by the winning architectural firm for that scheme (SJB). The SJB scheme includes additional bonus floorspace.

On 19 December 2019 the Applicant received advice from Council that the development was not technically eligible for additional floorspace allowance achievable under Clause 6.21 of SLEP 2012 as neither a site specific DCP nor a Stage 1 development application had been prepared for the site. Clause 1.2 of the City of Sydney Competitive Design policy states that:

*“The competitive design process is to be undertaken in accordance with a Design Excellence Strategy approved by the Consent Authority as part of an associated site-specific DCP or concepts stage development application (Stage 1 development application).”*

A Stage 1 DA was not undertaken in this case as site specific DCP controls are already in place for the site as contained within the Sydney DCP 2012; pursuing a Stage 1 DA would have added unnecessary time delays to the project and would merely result in a duplication of building envelope controls for the site already contained within the DCP. The wording of Clause 1.2 does not however, allow for such situations. The effect is that any bonus floorspace allowance achievable under Clause 6.21 may not be applied in the absence of a site specific DCP or Stage 1 DA having first been prepared.

The FSR proposed by D/2019/976 exceeds the maximum FSR control applicable to the site as it includes additional bonus floorspace sought under the provisions of Clause 6.21 of SLEP 2012. Council has requested that a Clause 4.6 variation request be submitted to address the technical non-compliance with the FSR control. This report seeks to address Council's requirement in this regard.

### **3. Clause 4.6 Exceptions to Development Standards**

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case, and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

*“(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...”*

*(3) 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.”*

Accordingly, we set out below the justification for the departure to the FSR control applicable under the LEP.

#### **4. Definition of development standard**

Section 1.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) lists the items (not limited to) that are considered to be development standards, and are listed below.

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,***
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.”*

The proposed variation of the FSR under Clause 4.4 of the LEP is a development standard for the purposes of the EP&A Act and Clause 4.6 of the LEP.

## 5. Proposed Variation

Clause 4.4 of SLEP 2012 specifies that the floor space ratio (FSR) of a building may not exceed the maximum FSR specified on the relevant FSR Map. The site is subject to a base FSR limit of 1.75:1. Pursuant to clause 6.14 of the LEP, the subject site is located within 'Area 6,' and an additional floor space ratio bonus of 0.5:1 applies. The floorspace bonus is available to developments that include additional public benefits or community infrastructure. In this case, the proposed development includes the construction of substantial additional public benefits with 29.5% of the total site area being dedicated for the creation of public roads. The community infrastructure to be provided is as follows:

- Construction of new public roads (Rose Valley Way and George Julius Avenue).
- Land dedication for footpath widening (Epsom Road).
- Provision of access easements (through site link connecting Gunyama Park and Rose Valley Way).

Including the community floorspace bonus, the maximum floor space achievable on the site is 23,827.5sqm, which equates to a floor space ratio of 2.25:1 as illustrated in **Table 1** below.

**TABLE 1: LEP FLOORSPACE ALLOWANCE**

LEP	FSR	GFA
Base FSR	1.75:1	18,532.5sqm
Community infrastructure bonus	0.5:1	5,295sqm
<b>TOTAL</b>	<b>2.25:1</b>	<b>23,827.5sqm</b>

The proposal seeks approval for GFA of 26,235sqm, and a resulting FSR of 2.48:1 based on a site area of 10,590sqm. The proposal exceeds the allowable FSR by 2,407.5sqm (10%).

The exceedance has arisen as a direct result of the inclusion of additional bonus floorspace that may be allocated to developments that have been subject to a competitive design process but which in this case may not technically be applied.

- In accordance with City of Sydney requirements specified under Clause 6.21 of SLEP 2012, the redevelopment of the site was the subject of a competitive design process. Under Clause 6.21 of the LEP, an additional 10% floor space or height bonus may be awarded at the discretion of the consent authority to proposed developments that have been the subject of a competitive design process.
- A design competition was held from 14 January 2019. The competing architectural firms were issued with a design brief prepared in collaboration with the City of Sydney. The preferred architectural firm, SJB was selected by a panel of experts on 21 March 2019. A Design Alternatives Report was prepared and submitted to Council for endorsement of the preferred selected architect.
- D/2019/976 was subsequently lodged with Council on 3 September 2019. The design of the proposed development presented in this DA is consistent with the winning design competition entry and includes potential additional gross floor area achievable under Clause 6.21.

- Council has advised that in technical terms the additional floorspace achievable under Clause 6.21 may not be applied in this case as the proposed development has not first been the subject of a Stage 1 DA as required by Clause 1.2 of the City of Sydney Competitive Design Policy.

## 6. Extent of variation

The proposal seeks a variation to the maximum FSR limit specified by Clause 4.4. An FSR of 2.48:1 is proposed. Consent for a 10% exceedance to the FSR is sought.

**TABLE 2: EXTENT OF VARIATION**

	<b>FSR</b>	<b>GFA</b>
LEP (base + bonus)	1.75:1 + 0.5:1	18,532.5sqm + 5,295sqm
	2.25:1	23,827.5sqm
Proposed	2.48:1	26,235sqm
<b>Difference</b>		<b>+2,407.5sqm (10%)</b>

## 7. Objectives of the Standard

### (a) Objectives of Floor Space Ratio Control

The objectives of Clause 4.4 Floor Space Ratio are as follows:

- *To provide sufficient floor space to meet anticipated development needs for the foreseeable future.*
- *To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.*
- *To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*
- *To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

### (b) Objectives of the Zone

The objectives of the B4 mixed use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure uses support the viability of centres.*

## 8. Assessment

### Clause 4.6(3)(a) – Is the development standard unreasonable or unnecessary?

*In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, 5 matters were listed to demonstrate whether compliance of a development standard was unreasonable or unnecessary, as established in Wehbe v Pittwater Council (2007) NSWLEC 827. This case also stipulated that all 5 methods may not need demonstrate compliance is necessary where relevant. Each of the matters are addressed below.*

- a) **Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].**

As outlined throughout the Statement of Environmental Effects (SEE) which accompanied the DA, and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of Clause 4.4 and the objectives of the B4 Mixed Use Zone. Importantly, the proposed development does not conflict with the intent of Clause 4.4 which is to ensure that the intensity of new development does not exceed the capacity of available infrastructure and to protect local character. The proposed development achieves these outcomes despite the exceedance in FSR proposed.

- b) **Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].**

N/A. The underlying objective of the FSR control is relevant to the development.

- c) ***Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].***

The underlying objectives of the FSR control are two fold:

- To ensure that new development can be adequately serviced by existing and planned infrastructure.
- To ensure that the new development reflects the desired future character of the locality.

Additional floorspace over and above the base floorspace ratio allowable for the site is envisaged by the Sydney DCP 2012. Figure 5.68 Epsom Park Building Height in Storeys Map contained within Section 5.3.4 Green Square – Epsom Park of the Sydney DCP 2012 provides indicative building envelopes and locations for the distribution of up to 10% additional floor space, which may be sought through the Competitive Design Alternatives Process.

In view of the particular circumstances in this case, strict compliance with Clause 4.4 of the LEP is considered to be unreasonable. Strict compliance with the base FSR control would result in an inferior design outcome and a considerable reduction in the development yield achievable on the site. This would threaten the viability of the project and would be contrary to the objectives for the FSR control which seek “to provide sufficient floor space to meet anticipated development needs for the foreseeable future.”

- d) ***Establish that the development standard has been virtually abandoned or destroyed by the Council’s own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].***

There are a number of examples of buildings within the locality that have been approved with an FSR greater than than nominated on the LEP FSR map. These applications include the following:

**TABLE 2: APPROVED VARIATIONS TO SLEP CLAUSE 4.4**

DA REF	SITE ADDRESS	DATE	EXTENT OF DEPARTURE
D/2019/391	23 Hansard Street, Zetland	29/11/2019	9.96%
D/2015/533	22 Gadigal Avenue, Zetland	21/05/2015	10%
D/2014/1275	5A Hansard Street, Zetland	25/11/2014	3%
D/2012/1955	5 Link Road, Zetland	10/02/2014	17%
D/2018/210	111 McEvoy Street, Alexandria	13/06/2018	64%
D/2016/989	205 Euston Road, Alexandria	22/06/2017	21%
D/2015/351	9 Power Avenue, Alexandria	10/11/2015	60%

Given the nature of the departure proposed in this instance, involving additional floorspace that is expected and supported by the site specific DCP controls that apply, and relating to an overall development that has been subject to a rigorous design review process, and noting that consent has been granted to other buildings within the immediate area for additional floor space which in some instances considerably exceed the maximum FSR control it would be unreasonable for strict compliance to be applied in this case.

The proposed development will still deliver a built form that is entirely compatible with the bulk and built form envisaged by the desired future character planned for the Epsom Park Precinct.

**e) Establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48].**

N/A. The site is appropriately zoned.

**Clause 4.6(3)(b) – Is there sufficient environmental planning grounds to justify contravening the development standard?**

*In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, the written request under Clause 4.6 must be “environmental planning grounds” by their nature established under Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA.*

**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 site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use locality. There are a number of developments proposed or under construction surrounding the site.

The departure from strict compliance with the numerical FSR control will not result in bulk or scale that is unacceptable. The proposed development includes the creation of public infrastructure including new roads.

Public areas, including Gunyama Park, will not be adversely affected by the proposed FSR of the development. The proposal will have a positive relationship with the new public park and will not have any adverse impacts on its amenity.

The proposal will deliver a total of 271 apartments, together with retail uses. This will positively contribute to the economic development and viability of the Epsom Park precinct through:

- Redeveloping a currently under-utilise site;

- Providing new residential housing stock within walking distance of Green Square Town Centre and rail station; and
- Providing new retailing to the future residential population.

**b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,**

The proposal incorporates green infrastructure works and ESD measures. The floorspace variation has no implications on the development's ability to comply with these requirements.

**c) to promote the orderly and economic use and development of land,**

The proposed development has been designed to provide for the highest and best use of the land, which ensures that the most efficient use of land is achieved. The approach allows for the yield anticipated by the relevant controls to be achieved on the site (noting that the Sydney DCP anticipates that an additional 10% GFA will be sought through the competitive design process), thereby providing an opportunity to increase the supply and diversity of residential accommodation within Epsom Park Precinct.

Strict compliance with the FSR control that applies to the site would result in a reduction in the overall yield achievable on the site. This would be contrary to this object.

**d) to promote the delivery and maintenance of affordable housing,**

The proposal will deliver additional housing stock that will ensure the market supply promotes housing choice and affordability.

**e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,**

The subject site is a former industrial site (Council depot) and is largely devoid of vegetation. The proposed development will not result in impacts to threatened flora and fauna, ecological communities or their habitats. Nor would the additional floorspace proposed over and above the LEP FSR control affect these matters.

**f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),**

The site is not heritage listed, nor is it situated within a heritage conservation area.

**g) to promote good design and amenity of the built environment,**

The proposed development exhibits good design and has been through a rigorous design assessment process. In their summing up of the winning design, the competition panel identified the proposal exhibited design excellence. Their assessment is summarised in the Design Alternatives Report which comments as follows:

*“The panel considered this scheme to be superb. It is a skilful and elegant proposal which has the potential to become a beautiful backdrop to the public domain, particularly with its civic presence to Gunyama Park.”*

The selection panel unanimously recommended the SJB submission as the winning scheme for the competition.

**h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,**

The Applicant has considerable experience in the construction and the management of buildings and has drawn on this experience in the development of this project. The proposed buildings and additional height will be constructed in accordance with relevant BCA and AS requirements.

**i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,**

The additional FSR proposed does not affect any matters of State or Regional importance.

**j) to provide increased opportunity for community participation in environmental planning and assessment**

Council will consider submissions at the close of the exhibition period.

Clause 4.6(4)(a)(i) – The applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

This written justification has been carried out in accordance with a recent court judgement “*Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC11.*” It demonstrates that the variation to the development standard is acceptable.

Clause 4.6(4)(a)(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 proposed development is consistent with the objectives of the zone, and the objectives of the FSR control and as such is in the public interest. The land use table contained within Part 2 of the SLEP2012 sets out the objectives of the B4 mixed use zone as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure uses support the viability of centres.*

The departure to the LEP FSR control does not affect the consistency of the proposed development with these objectives. The development involves the construction of new residential apartments complemented by new local scale retail facilities which will contribute to the local supply of housing and associated services within the Epsom Park Precinct. The mix of uses proposed does not change as a result of the departure to the FSR control proposed.

The incoming population will provide opportunities for increased patronage of public transport infrastructure as well as local shops and other facilities, thereby assisting in supporting the viability of these uses.

Clause 4.4 sets out the objectives of the maximum FSR development standard. The consistency of the proposed development with these objectives is set out in **Table 3** below.

**TABLE 3**

**: FSR OBJECTIVES**

OBJECTIVES	PROPOSED DEVELOPMENT															
<i>To provide sufficient floor space to meet anticipated development needs for the foreseeable future.</i>	The proposal has sought to maximise the floorspace potential of the site within the parameters of the existing controls. As such it directly contributes to this objective.															
<i>To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.</i>	<p>The subject land is identified for future mixed use development. The urban density and built form scale permitted under the existing controls allows for more intensive development on the site than currently exists. The existing controls recognise that development on this site will be prominent in terms of scale.</p> <p>The traffic impacts of the proposed development have been investigated. As demonstrated in the traffic report which accompanies the DA, no adverse traffic impacts will arise as a result of the proposal.</p>															
<i>To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.</i>	<p>The Epsom Park Precinct has been subject to extensive masterplanning which has informed the current controls for the site as contained in the SLEP 2012 and accompanying DCP. An additional 10% floorspace over and above the base FSR controls that apply to the site is sought (2,407.5sqm). In simple terms this equates to around 26 additional apartments which would allow for a nominal additional population (around 47 persons) when compared to a development that only achieves the base floorspace allowable by the LEP.</p> <table border="1" data-bbox="740 1263 1428 1496"> <thead> <tr> <th data-bbox="740 1263 970 1361">Occupancy</th> <th data-bbox="970 1263 1200 1361">Indicative Additional Units</th> <th data-bbox="1200 1263 1428 1361">Indicative Additional Population</th> </tr> </thead> <tbody> <tr> <td data-bbox="740 1361 970 1397">1 bed – 1.3 persons</td> <td data-bbox="970 1361 1200 1397">9 (35%)</td> <td data-bbox="1200 1361 1428 1397">12</td> </tr> <tr> <td data-bbox="740 1397 970 1433">2 bed – 1.9 persons</td> <td data-bbox="970 1397 1200 1433">14 (53%)</td> <td data-bbox="1200 1397 1428 1433">27</td> </tr> <tr> <td data-bbox="740 1433 970 1469">3 bed – 2.7 persons</td> <td data-bbox="970 1433 1200 1469">3 (12%)</td> <td data-bbox="1200 1433 1428 1469">8</td> </tr> <tr> <td data-bbox="740 1469 970 1496"><b>TOTAL</b></td> <td data-bbox="970 1469 1200 1496"><b>26</b></td> <td data-bbox="1200 1469 1428 1496"><b>47</b></td> </tr> </tbody> </table>	Occupancy	Indicative Additional Units	Indicative Additional Population	1 bed – 1.3 persons	9 (35%)	12	2 bed – 1.9 persons	14 (53%)	27	3 bed – 2.7 persons	3 (12%)	8	<b>TOTAL</b>	<b>26</b>	<b>47</b>
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2 bed – 1.9 persons	14 (53%)	27														
3 bed – 2.7 persons	3 (12%)	8														
<b>TOTAL</b>	<b>26</b>	<b>47</b>														
<i>To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.</i>	<p>The proposed development is entirely consistent, in terms of bulk and scale, with the building envelope controls identified for the site as contained in the Sydney DCP. The height of new buildings is generally consistent with the LEP height control that applies (marginal exceedance relating to roof top plant proposed).</p> <p>The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties as a result of overshadowing or visual impact and the proposed FSR is therefore considered to be acceptable particularly when balanced against the considerable benefits of the project.</p>															

## Clause 4.6(5)(b) – The public benefit of maintaining the standard

As outlined throughout the SEE and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone. The proposed development merely seeks to achieve the density outcome envisioned by Council's controls for the site. No more density is proposed for the site than that allowable under SLEP 2012, noting that Clause 6.12 makes provision for additional floorspace where development is subject to a design competition, as occurred in this case, and that the DCP also anticipates that additional floorspace will be sought through the competitive design process.

The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties as a result of overshadowing or visual impact and the proposed FSR is therefore considered to be acceptable particularly when balanced against the considerable benefits of the project which are:

- Provision of new housing and employment opportunities on land zoned for this purpose within the short term.
- Development of an under-utilised site (currently a redundant Council depot site) identified for future mixed use development (being zoned B4 Mixed Uses).
- Direct contribution to the provision of new public infrastructure, in the form of new roads.
- The proposal will provide positive social outcomes through the provision of housing and a new public infrastructure.

## 9. Conclusion

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.4 of the LEP. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary as follows:

- The proposal technically breaches the FSR limit that applies to the site as it relies on bonus floorspace achievable under Clause 6.21 which may not be allocated without a Stage 1 DA first being approved for the site. Site specific development controls already apply to the site and any requirement for a Stage 1 DA would be superfluous in this case.
- The design of the development has been subject to a design competition which was endorsed by Council and results in a built form that achieves design excellence.
- The proposed development is consistent with the intent of Clause 4.4 of the LEP which is to ensure density is consistent with the capacity of existing and planned services and infrastructure, and to support the desired future character of the area.
- Departures to the LEP FSR limit for other buildings within the immediate vicinity where it has been demonstrated that no additional adverse impact would arise as a result of additional GFA proposed have been approved.

As outlined within this report, the proposed development is considered to be an appropriate response to the site. Importantly, the proposal has been informed by an analysis of site constraints and opportunities to provide a realistic indication of development potential. The proposal will ensure that development of the site can contribute to the local housing supply whilst providing an urban design response that is appropriate to the emerging context of the locality.

It is considered that the proposal provides an appropriate response to the planned redevelopment of the site for future mixed use and will assist in the orderly and economic development of the land in a timely manner.

Having considered all the relevant matters it is concluded that the proposal represents a sound development outcome for the site.

**Meriton**

**April 2020**