

Updated - Clause 4.6 written request - Variation to Floor Space Ratio

Mixed Use Build-to-Rent – SSSDA

81-83 George Street and 1 Barrack Lane,
Parramatta

Prepared for
Freecity Parramatta Development No 1 Pty Ltd

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Project Director

Amanda Harvey - Director

Contributors

Katherine McIntosh - Associate

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* This document is for discussion purposes only unless signed and dated by the persons identified.
This document has been reviewed by the Project Director.

Contact

MECONE

Suite 1204b, Level 12, 179 Elizabeth Street
Sydney, New South Wales 2000

info@mecone.com.au
mecone.com.au

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Table of Contents

1	Introduction	1
2	Site description	2
3	Proposed development	3
4	Relevant planning instrument, development standards and proposed variations	5
4.1	Environmental Planning Instrument to be varied	5
4.2	Site zoning	5
4.3	Development standards to be varied.....	5
4.4	Limitations to Clause 4.6 of the PLEP 2023	7
5	Justification for Variation to Development Standards	8
5.1	Role of the consent authority.....	8
5.2	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	9
5.3	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	12
5.4	Consistency with Objects of the EP&A Act.....	13
5.5	Other Matters for Consideration	14
6	Conclusion	15

Table of Tables

Table 1:	Maximum permitted GFA and FSR and variation to standards	6
Table 2:	Assessment of consistency of the proposed development with the objects of the EP&A Act ..	13



1 Introduction

The State Significant Development Application (**SSDA**) at 81-83 George Street, Parramatta (**the site**) seeks approval for the construction of a 40-storey mixed-used and build-to-rent (**BTR**) development.

The SSDA proposes an exceedance of the 12:1 Floor Space Ratio (**FSR**) development standard that applies to the site pursuant to Clauses 4.4, 7.15 and 7.25 of the *Parramatta Local Environmental Plan 2023* (PLEP 2023). Such an FSR is based upon:

- 10:1 FSR pursuant to Clause 4.4(2) of the PLEP 2023
- A 15% (i.e. 1.5:1) FSR bonus pursuant to Clause 7.15(2)(b) of the PLEP 2023
- A 5% (i.e. 0.5:1) FSR bonus pursuant to Clause 7.25(3) of the PLEP 2023.

The proposed FSR constitutes a 4.996% variation to the FSR development standard.

This written variation request has therefore been prepared by Mecone on behalf of Freecity pursuant to Clause 4.6 of the PLEP 2023 and seeks to justify the contravention of the FSR development in the circumstances of this proposal. It demonstrates that strict compliance with the combined maximum FSR is both unreasonable and unnecessary in the circumstances of the proposal, and that there are sufficient environmental planning grounds to justify the variation. Further, this written request also demonstrates that, despite the non-compliance with the applicable floor space development standards, the proposed development is justified and reasonable.

2 Site description

The subject site comprises of three allotments that have addresses and legal descriptions as follows:

- 1 Barrack Lane Parramatta (Lot 101 in DP 1110883)
- 81 George Street Parramatta (Lot 1 in DP 628004)
- 83 George Street Parramatta (Lot 250 in DP 1287232)

The site is located within the Parramatta Local Government Area (**LGA**) and is located within the E2 Commercial Centre zone. It contains two road frontages, comprising of George Street to the north and Barrack Lane to the east.

The site is irregularly shaped with a total combined area of 3,071.5m². Existing development on the site consists of a three storey office premises at 81 George Street, a three storey commercial premises at 83 George Street and a two storey building at 1 Barrack Lane

The subject site is located within the Parramatta City Centre, to the northeast of Parramatta Station.

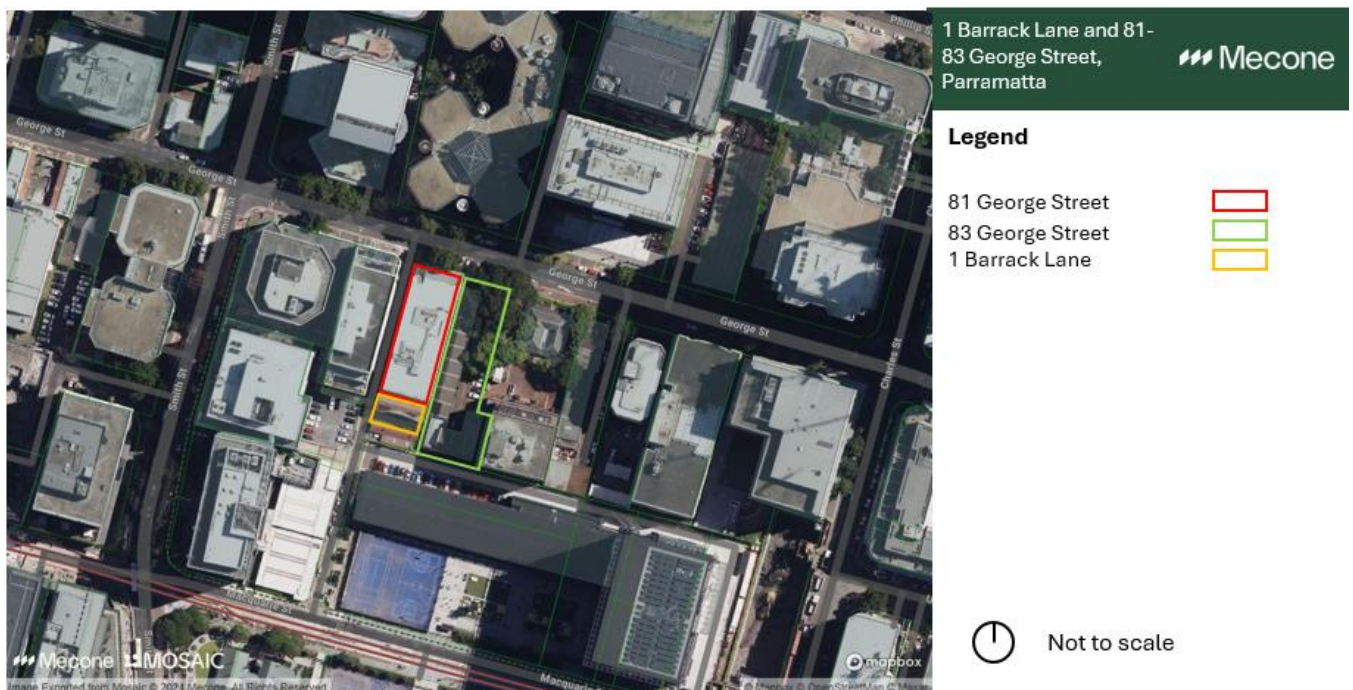


Figure 1: Subject Site

Source: Mecone Mosaic, 2025



3 Proposed development

The subject SSDA seeks approval for the construction of a mixed use build-to-rent development at 1 Barrack Lane and 81-83 George Street, Parramatta (herein referred to as the site) – ref. SSD-79439459.

While reference is made to the Environmental Impact Statement (**EIS**) to which this document is appended and the Response to Submissions Report (**RTS**), an overview of the proposal is as follows:

- Demolition of existing site structures and the removal of two trees (including one street tree),
- The construction of a forty storey mixed-use development comprising:
- Site preparation works including preparatory earthworks.

In response to various matters raised during exhibition the scope of the development has been refined to include:

- A three-storey podium including:
 - **Ground floor:** a flexible retail area and a leasing office, a BTR lobby and management area, two private meeting rooms and seating area, mail room, services and waste rooms, separate vehicle entries for residential use and service use, 4 parking spaces for service vehicles, bike repair facilities and 40 bicycle parking spaces,
 - **First level:** 32 car parking spaces, inclusive of 2 accessible spaces, 214 bicycle parking spaces, 7 motorcycle parking space and services,
 - **Second level:** 39 car parking spaces, inclusive of 2 accessible spaces, 170 bicycle parking spaces, 7 motorcycle parking spaces, a residential storage area and services, and
 - **Upper podium level:** providing communal open space and amenities.
- A thirty-seven (37) storey tower incorporating 383 BTR apartments (including 192 dual key apartments).
- Installation of a new substation and infrastructure connections, as required.
- Associated landscaping and public domain works.
- Extended hours of construction and the installation of creative construction hoardings.

Further details on the proposed design changes made since lodgement of the SSDA are provided in the RTS Report prepared by Mecone, dated April 2026.

As a result of these amendments, there has been a marginal increase of 9.8m² in the development's floor space compared to what was originally proposed at SSDA lodgement. This revised Clause 4.6 Report has been updated to address the change in floor space and to reassess whether the original justification for the variation remains valid.



Figure 2: Updated render of the proposed development as viewed from George Street, depicting the tower (left) and podium façade (right)

Source: FK Australia, 2026



Figure 3: Updated render of the proposed development as viewed from Smith Street

Source: FK Australia, 2026



4 Relevant planning instrument, development standards and proposed variations

4.1 Environmental Planning Instrument to be varied

The Environmental Planning Instrument (EPI) to be varied is *Parramatta Local Environmental Plan 2023 (PLEP 2023)*.

4.2 Site zoning

The site is zoned as an E2 Commercial Centre zone.

4.3 Development standards to be varied

4.3.1 Details of development standards

This Clause 4.6 Variation Request is submitted to support a departure from the total FSR permitted under a combination of the development standards prescribed by Clauses 4.4(2), 7.15(2)(b) and 7.25(3) of the PLEP 2023.

The 3,071.5 m² site is subject to a mapped maximum FSR of 10:1 under Clause 4.4 of the PLEP 2023. However, the proposed development also seeks to utilise the following FSR incentives available under the following PLEP 2023 clauses. Together, these provisions enable a potential uplift in FSR beyond the base control under Clause 4.4, subject to meeting the relevant criteria. These criteria have been addressed below and assessed in detail as part of the EIS that accompanies this SSDA.

- **Clause 7.15(2)(b) – Design Excellence Bonus:** Provides an FSR bonus of up to 15% bonus for developments that have undergone a competitive design process and are deemed to exhibit design excellence in accordance with Division 3.
 - The proposal meets these requirements as:
 - The building is the winner of a competitive design process, and
 - The building exhibits design excellence.

A detailed assessment of the proposal against the relevant matters for consideration in determining design excellence under Clause 6.13(4) is provided at **Section 6.1** of this EIS.

- **Clause 7.25(3) – High-Performance Building Bonus:** Allows for an additional 5% FSR bonus where the development meets specified high-performance building targets.
 - The proposal meets these requirements as:
 - The proposal is for a mixed-use development (including BTR) dwellings, a type of residential accommodation, with:
 - A width of approximately 40m at the front building line,
 - An area of 3,071.5m², and
 - Has a maximum permissible FSR of 10:1 under Clause 4.4.
 - The development will not adversely affect surrounding sites in terms of visual bulk or overshadowing, and
 - Meets BASIX targets as prescribed by the PLEP 2023.

A detailed assessment of the proposal against the relevant matters for consideration is provided at **Section 6.2** of this EIS.



Table 1 outlines the maximum permissible Gross Floor Area (**GFA**) permitted under the PLEP 2023 and the extent of the proposed FSR variation sought.

The development standard to be varied is therefore a numerical development standard.

Table 1: Maximum permitted GFA and FSR and variation to standards

LEP Clause	FSR Control	Max. combined FSR	Max. total permissible GFA	Proposed GFA	Proposed FSR	Variation
Clause 4.4(2)	10:1	12:1	36,858m ²	38,699.7m ²	12.6	1,841.7m ² (4.996%)
Clause 7.15(2)(b)	1.5:1 (bonus 15%)					
Clause 7.25(3)	0.5:1 (bonus 5%)					

4.3.2 Details of proposed FSR variations

The increase in floor space beyond the permitted FSR is primarily due to the inclusion of winter gardens in the residential apartments, which were not part of the original design. Following a review of the design specifications—particularly in relation to waterproofing and wind protection—the balconies have been redesigned to be closeable. As a result, these winter gardens are now considered enclosed spaces and therefore contribute to the proposal’s gross floor area calculation. The winter gardens attribute a total of 2,031.7m² or 5.2% of the total proposed floor area of the development. This is 162.3m² less than originally proposed at the time of lodgement. This change is attributed to reconfigurations to the north-west edge of building.

To moderate the development’s design to accommodate this additional floor space, the overall building height was reduced from 41 storeys to 40 storeys. Reducing the floor space further in this same way to make the development compliant with the maximum permitted FSR, would mean losing a partial floor and for construction methodology reasons this is not possible.

While further efforts were made to reduce the floor area, any additional adjustments beyond that above were found to compromise the design integrity or diminish the amenity of the proposed development.

It is important to note that the proposed development does not include any basement levels, due to the site’s flood affectation. As a result, storage and garbage areas have been accommodated within the building envelope above ground, thereby contributing to the overall gross floor area.

In contrast, these spaces are typically located in basement levels in most developments and therefore excluded from GFA calculations. The revised residential storage inclusive of bike storage spaces on Level 1 and 2 is now 497m² (GFA) (revised to accommodate additional storage) and the waste rooms on the Ground floor are now 200m² (GFA), which is somewhat less after the design has been optimised. If the total floor area of these areas had been excluded - being 697m² or 1.80% of the overall floor area of the proposal – the overall FSR variation would have only amounted to 3.11%.

The verification for the overall quantum of GFA for the development is included with the RTS package and has been prepared by FK.



4.4 Limitations to Clause 4.6 of the PLEP 2023

Clause 4.6(8)(ca) of the PLEP 2023 provides that, for development within the Parramatta City Centre, development consent cannot be granted under Clause 4.6 if the proposed development would contravene a development standard relating to building height or floor space ratio by more than 5%.

As indicated by **Table 1**, the proposed floor area does not exceed the permitted amount under PLEP 2023 by more than 5%, therefore complying with the flexibility provisions provided in Clause 4.6(8) of the PLEP 2023.



5 Justification for Variation to Development Standards

Clause 4.6(3) of the Parramatta LEP 2023 provides that:

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Accordingly, Clause 4.6 may be invoked to vary the maximum FSR standard set out in relevant FSR clauses in the PLEP 2023, to the extent necessary to address the non-compliance. This is permissible provided the total floor space exceedance does not exceed the 5% threshold specified in Clause 4.6(8)(ca).

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 (L&EC) in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).
5. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.
6. *Moskovich v Waverley Council* [2016] NSWLEC 1015.

The relevant provisions of Clause 4.6 of the Parramatta LEP 2023 relating to the maximum FSR development standards are addressed below, including consideration of the referenced L&EC decisions outlined above.

5.1 Role of the consent authority

The NSW Court of Appeal has clarified the role of the consent authority when assessing a Clause 4.6 variation request. Before considering the merits of the development proposal, the consent authority must first be satisfied that the applicant's written request adequately addresses the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2023.

This includes forming the opinion that there are sufficient environmental planning grounds to justify the proposed contravention of the development standard. Only once this threshold is met can the consent authority proceed to assess the broader merits of the DA.

This written request provides the necessary justification for the consent authority to reach that level of satisfaction. The relevant provisions of Clause 4.6 of the PLEP 2023, as they relate to the FSR development standard, are addressed in detail below, with reference to applicable case law and planning principles.



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

Valuable guidance is provided by Preston CJ in the case of *Wehbe v. Pittwater Council* [2007] NSW LEC 827 (Wehbe). Preston CJ identified five traditional ways in which a variation to a development standard had been shown to be unreasonable or unnecessary. These five approaches include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *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.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above scenarios. Relevant to the proposal the First approach is particularly helpful in demonstrating that strict compliance with the FSR development standards is unreasonable or unnecessary.

The objectives of the development standard contained in Clause 4.4(1) of the PLEP 2023 are:

- (1) *The objectives of this Clause are as follows—*
 - (a) *to ensure buildings are compatible with the bulk, scale and character of existing and desired future development in the surrounding area,*
 - (b) *to regulate density of development and generation of vehicular and pedestrian traffic,*
 - (c) *to provide a transition in built form and land use intensity,*
 - (d) *to require the bulk and scale of future buildings to be appropriate in relation to heritage sites and their settings,*
 - (e) *to reinforce and respect the existing character and scale of low density residential areas.*

There are no specified objectives contained in Clause 7.15 of the PLEP 2023, whereas the objectives of the development standard under Clause 7.25(1) are:

- (1) *The objectives of this Clause are as follows—*
 - (a) *to encourage high performing building design that minimises energy and water consumption for development for the following purposes—*
 - (i) *hotel or motel accommodation,*
 - (ii) *office premises,*
 - (iii) *residential flat buildings,*
 - (iv) *large retail premises,*
 - (v) *serviced apartments,*



- (vi) *mixed use development,*
- (b) *to increase amenity to occupants in the long term,*
- (c) *to ensure an increase in the gross floor area of a building is compatible with surrounding buildings in terms of bulk, height and amenity,*
- (d) *to ensure high performing building measures reflect new technologies and commercial viability.*

The relevant objectives of the FSR development standards pursuant to Clauses 4.4, 7.15 and 7.25 and are provided below, with a response as to how those objectives are achieved notwithstanding noncompliance with the standard:

Objectives for Clause 4.4 (a) and Clause 7.25 (c) - to ensure buildings are compatible with the bulk, scale and character of existing and desired future development in the surrounding area

The total amount of surplus floor space that exceeds that permitted under PLEP 2023 principally relates to the inclusion of the winter gardens. Taking into account the above objectives the proposed variation to the maximum permitted floor space is acceptable and suitable on the basis that:

- The building's form remains unchanged with the enclosure of the balconies as this change does not increase the buildings width or length, making sure that the resultant residential tower is still consistent with desired future character.
- Winter gardens are increasingly common in contemporary urban design, especially in higher-density areas and help to retain the same tower built form character expected for a growing and new CBDs such as Parramatta, while also providing enhanced year-round residential amenity.
- The minor FSR exceedance does not result in any perceptible increase in bulk or scale when viewed from surrounding sites and the public domain – refer to the photomontages of the proposal within the EIS, and both the accompanying architectural plans and Visual Impact Assessment (VIA).
- The architectural treatments provide seamless integration of the winter gardens, maintaining coherent façade rhythms and avoiding visual clutter or over-articulation.
- The design supports a high-quality urban outcome, balancing residential amenity with built form controls, in line with strategic planning goals for the area.

A more comprehensive assessment of the proposal's built form is included in the EIS, which demonstrates that the proposal is suitable for the site and the existing and future desired character of the site's locality.

Objective Clause 4.4 (b) - to regulate density of development and generation of vehicular and pedestrian traffic

The additional floor space resulting from the inclusion of winter gardens does not increase the number of residential apartments, nor does it add bedrooms or increase the occupancy potential of individual units. These enclosed spaces are intended to enhance amenity and respond to design and Volumetric Modular Construction (VMC) requirements, rather than to intensify residential use.

Consequently, the variation to the FSR standard will not generate additional pedestrian or vehicular traffic, nor will it place further demand on public transport services beyond what was originally anticipated.



Objective Clause 4.4 (c) - to support transition in built form and land use intensity

Being located within the Parramatta city centre, the PLEP 2023 envisions that:

- future development on the site and surrounding sites to the east, west and north will contain FSRs of up to 10:1, and higher when design excellence and ESD outcomes are achieved, and
- future development around the peripheries of the city centre will progressively transition to lower densities.

The proposed FSR variation is primarily attributable to the inclusion of winter gardens within the residential design. These elements do not contribute to a perceptible increase in building bulk or scale. As such, the proposed built form remains consistent with the anticipated future development of surrounding sites, particularly those to the east, west, and north.

The variation will not compromise the site's or surrounding area's ability to facilitate a suitable transition to lower-density zones at the city centre's edges. Accordingly, the proposed FSR variation is considered to be consistent with objective (c) of Clause 4.4(1) of the PLEP 2023.

Objective Clause 4.4 (d) - to require the bulk and scale of future buildings to be appropriate in relation to heritage sites and their settings

The inclusion of winter gardens within the proposed development does not result in any increase to the building envelope or external bulk and scale. These spaces are internal refinements designed to improve residential amenity and respond to construction methodology, without altering the overall massing or visual appearance of the building.

The proposed development maintains appropriate setbacks, height controls and view corridors that ensure the heritage significance of the adjacent fig tree and nearby State-listed heritage items is preserved. The winter gardens are fully integrated within the approved building form and do not introduce any new visual or physical impacts that would compromise the setting, prominence, or interpretation of these heritage elements.

The proposal's design has been carefully considered to ensure that the bulk and scale of the building remain appropriate in relation to its heritage context, consistent with objective (d) of Clause 4.4 of PLEP 2023. The proposal respects the spatial relationship between the new built form and the heritage items, ensuring that the development complements rather than dominates its heritage precinct surroundings.

Objective Clause 4.4 (e) - to reinforce and respect the existing character and scale of low density residential areas

Whilst considered for completeness, as the site is not within or in proximity to a low-density residential area. The objective is subsequently not relevant to and will not be impacted by the proposal.



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

Clause 4.6(3)(b) of the PLEP 2023 requires the consent authority to be satisfied that the applicant has demonstrated sufficient environmental planning grounds to justify the proposed contravention of the development standard. As clarified by the NSW Court of Appeal in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWCA 278 at [24], the focus must be on the aspect of the development that contravenes the standard—not the development as a whole. Accordingly, the justification must directly relate to the exceedance of the FSR standard, rather than general benefits of the proposal.

Further, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at [60], the Court held that the environmental planning grounds must be specific to the circumstances of the proposed development on the subject site.

In this instance, the proposed contravention of the FSR standard is modest and results from the inclusion of winter gardens—an internal design refinement that enhances residential amenity and responds to construction methodology. These spaces do not increase the number of dwellings, bedrooms, or occupancy potential, and therefore do not intensify the development or generate additional traffic or infrastructure demand.

The winter gardens are fully contained within the approved building envelope and do not alter the bulk, scale, or external presentation of the development. Importantly, the inclusion of the winter gardens as part of the proposal's design still ensures that it maintains appropriate setbacks and view corridors, while ensuring that the view lines to the heritage listed and adjacent fig tree and the State listed items are preserved. The proposal remains consistent with the objectives of Clause 4.4, particularly objective (d), which seeks to ensure that the bulk and scale of future buildings are appropriate in relation to heritage sites and their settings.

As an alternative, if winter gardens could not be incorporated into the design, then none of the apartments would be provided with balconies, as traditional open balconies are incompatible with the waterproofing requirements of the VMC method. Further, the provision of open balconies could introduce long-term waterproofing risks for the development. The winter gardens therefore offer a compliant and functional solution that maintains year-round residential amenity without compromising construction integrity.

These site-specific planning grounds provide a clear and reasonable basis for the proposed variation and support the conclusion that strict compliance with the FSR development standards is both unnecessary and unreasonable in this case. A summary of these reasons are as follows:

- Winter gardens are semi-enclosed and visually recessive, contributing less to perceived bulk than traditional open balconies, which often protrude and accentuate building mass.
- They enhanced residential amenity without increasing visual scale, offering highly usable private open space that integrates into the building envelope more discreetly.
- The additional floor space is functionally minor, as winter gardens are transitional spaces—not fully enclosed rooms—thus their contribution to bulk is negligible.
- If the winter gardens could not be implemented, none of the apartments would be afforded a balcony as this is inconsistent with the VMC waterproofing methods which may have resulted in future waterproofing issues.
- Design refinement has already occurred, with the building reduced by one storey to mitigate overall floor space and height impacts, demonstrating a proactive approach to better manage the proposal's floor space.
- The proposal remains well within LEP-prescribed building height and solar plane standards, ensuring vertical scale remains consistent with planning controls and surrounding context.
- Winter gardens improve acoustic and thermal performance, supporting sustainability and residential amenity without compromising external building character.



Regarding the above, are subsequently sufficient environmental planning grounds to justify the proposed variation to the FSR development standard.

5.4 Consistency with Objects of the EP&A Act

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWCA 278, the Court clarified that the phrase “environmental planning grounds” is not defined in the legislation, but should be understood as referring to grounds that relate to the subject matter, scope, and purpose of the Environmental Planning and Assessment Act 1979 (EP&A Act), including the objects set out in Section 1.3 of the Act.

While it is not strictly necessary for a proposed development to be fully consistent with all objects of the EP&A Act, the environmental planning grounds must nonetheless demonstrate a meaningful connection to those objects.

As outlined in **Table 2** below, the proposed development is broadly consistent with the objects of the Act, notwithstanding the proposed variation to the FSR development standard.

Table 2: Assessment of consistency of the proposed development with the objects of the EP&A Act

Item	Description
Section 1.3 – EP&A Act	
(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 FSR variation will help to promote social and economic welfare of residents in the development by delivery highly versatile floor space that can be used in all weathers.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposed variation will provide highly useable floor space thereby providing a highly sustainable development outcome. Further, the additional floor space will have no negative impacts on environmental and social considerations.
(c) to promote the orderly and economic use and development of land,	The use of winter gardens supports the use of VMC building methods that will ensure that efficient delivery of new development is achieved more quickly to allow for orderly development of the land.
(d) to promote the delivery and maintenance of affordable housing,	The additional floor space generated by the inclusion of winter gardens directly supports the implementation of the VMC method, which in turn enables faster delivery of housing. By improving construction efficiency and reducing delays, this approach contributes to the timely provision of more affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Not relevant to this variation.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The exclusion of basement levels will help to conserve any found items under existing buildings. The consequence of this design decision means that floor space for storage and garbage storage contributes to the total floor space of the proposal. This outcome is preferred for reasons to promote and conserve the built and cultural heritage of Parramatta.
(g) to promote good design and amenity of the built environment,	The inclusion of winter gardens has been reviewed by the Competition Design Integrity Panel and has been developed in conjunction with specialist VMC consultants to ensure quality design is still achieved, while ensuring the building is functional and has high amenity.



Item	Description
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The provision of winter gardens will ensure that the building will not succumb to waterproofing issues and will provide a versatile space that can be used by occupants that will contribute to their wellbeing.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Not relevant to this variation
(j) to provide increased opportunity for community participation in environmental planning and assessment.	Not relevant to this variation

5.5 Other Matters for Consideration

The proposed variation does not exceed the 5% tolerance allowed under Clause 4.6(8)(ca) of PLEP 2023; in relative terms, the proposed level of floor space exceedance is considered to be minor.

Moreover, if the proposed storage and garbage areas had been included in the basement of the proposed development – as is often typical for new mixed use developments throughout Sydney – this quantum of floor space would not have been contributed to the overall floor space for the development or contributed to the resultant proposed FSR of 12.60:1. Instead if these spaces had not be counted the proposal's GFA, the overall FSR would be approximately 12.37:1 – which would have meant the proposal would have varied the maximum permitted FSR by 3.11% and not 5%.

This context demonstrates that the proposed exceedance is a direct consequence of site specific constraints and design responses, rather than an attempt to intensify development.



6 Conclusion

The assessment above demonstrates that compliance with the FSR development standard contained in FSR clauses of PLEP 2023 is unreasonable and unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention. It is also submitted that the proposed FSR variation allows for the orderly and economic use of the land in an appropriate manner, whilst also providing for better planning outcomes.

This Clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standards, compliance with the development standard would be unreasonable and unnecessary and there are sufficient planning grounds to justify the contravention for the following reasons:

- **Flood-affected and heritage site constraints:** Due to the site's flood affectation and potential archaeology, basement levels could not be provided. As a result, storage and garbage areas that would ordinarily be placed in a basement (and therefore excluded as GFA) is required to be accommodated above ground and is in part attributable to the proposed FSR variation.
- **No increase in density or occupancy:** The winter gardens do not result in additional dwellings, bedrooms, or increased occupancy. Therefore, these elements do not intensify the development or impact infrastructure demand.
- **Contained within approved building envelope:** The additional floor space will be internalised with the building envelope, and as such will not increase the development's bulk, scale, height, nor will it adversely affect its external presentation. The development remains visually consistent with the permitted building envelope.
- **Preservation of heritage significance:** The proposal maintains appropriate setbacks and view corridors, ensuring no adverse impact on the heritage significance of the adjacent fig tree or nearby State-listed items, in line with the objectives in Clause 4.4(d) of PLEP 2023.
- **Site-specific design response:** The inclusion of winter gardens is a direct response to the waterproofing requirements of the VMC method. Traditional open balconies are incompatible with this approach, and excluding winter gardens would compromise residential amenity.
- **Minor exceedance within allowable flexibility:** The proposed FSR of 12.6:1 meets the 5% variation limit permitted under Clause 4.6(8)(ca) and if storage and garbage areas had been excluded if they had been situated within basement levels, the overall FSR variation would have only been 3.11%.
- **The development maintains design excellence and performance standards:** The development benefits from FSR bonuses under Clauses 7.15 and 7.25, having achieved design excellence and met high-performance building targets, reinforcing the quality and integrity of the proposal.

Pursuant to Clause 4.6(3) of the PLEP 2023, the consent authority can therefore be satisfied that the applicant's written request has adequately demonstrated that:

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

On this basis the proposed FSR variation is modest, justified and consistent with the intent of Clause 4.6, which allows for limited flexibility in appropriate circumstances.

Therefore, the consent authority can be satisfied that this Variation Request has demonstrated the matters in Clause 4.6 of PLEP 2023 are adequately addressed and is able to grant development consent notwithstanding the contravention of the combined FSR development standards.



mecone.com.au
info@mecone.com.au
02 8073 4677