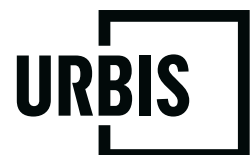




CLAUSE 4.6 VARIATION REQUEST MARRICKVILLE LEP 2011 – FLOOR SPACE RATIO

74 Edinburgh Road, Marrickville

Prepared for
WOOLWORTHS GROUP LIMITED
22 September 2020



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1. INTRODUCTION

This request has been prepared in support of a State Significant Development Application (**SSDA**) for the construction of a warehouse and distribution facility and associated offices at 74 Edinburgh Road, Marrickville (**the Site**). This request has been prepared by Urbis on behalf of Woolworths Group Limited, the applicant for the SSDA (SSD-10468)

The Minister for Planning and Public Spaces, or their delegate, is the consent authority for the SSD DA and this application is lodged with the NSW Department of Planning, Industry and Environment (**NSW DPIE**) for assessment.

The SSDA seeks development consent for the following:

- Demolition of the existing buildings, associated structures and landscaping;
- Construction of a two storey warehouse comprising:
 - a speculative warehouse at level 1 (ground level) which can be used as a single tenancy or divided into two separate warehouse tenancies ; and
 - Woolworths semi-automated Customer Fulfillment Centre (CFC) at level 2;
- Construction of associated office space across five levels to be used by CFC workers and WooliesX, a business unit within Woolworths Group Limited, in conjunction with the warehouse and CFC;
- Two storey car park adjacent to Edinburgh Road;
- Two storey hardstand loading and delivery area adjacent Sydney Steel Road;
- Private vehicle access from two points on Edinburgh Road;
- Heavy vehicle / loading vehicle access from four points on Sydney Steel Road; and,
- Tree removal and landscaping works.

Use of the warehouse will be on a 24-hour, 7-day basis, consistent with surrounding operations.

This request seeks to vary the maximum floor space ratio (**FSR**) development standard prescribed for the Site to Clause 4.4 of the *Marrickville Local Environmental Plan 2011 (MLEP 2011)*. MLEP 2011 prescribes a maximum FSR of 0.95:1. The proposed development has a maximum FSR of 1.39:1.

This variation request is made pursuant to Clause 4.6 of MLEP 2011. For a request to meet the requirements of Clause 4.6(3) of MLEP, it must adequately demonstrate:

(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.

This request contains justified reasoning for the proposed variation to the FSR development standard and demonstrates that:

- The objectives of the development standard will be achieved, notwithstanding that the development standard will be exceeded, and in doing so, establishes that compliance with the standard is unreasonable or unnecessary (*Initial Action* at [17]) – Refer to Section 7.1 of this Request.
- The proposal is consistent with the objectives of the zone in which the proposed development is proposed to be carried out, being the IN1 General Industrial Zone and SP2 (Stormwater Management Systems) Zone – refer to Section 7.2.3 of this request.
- Whilst the FSR development standard will be exceeded, there are sufficient environmental planning grounds to support the proposed development – Refer to Section 7.2.2 of this Request.

This request should be read in conjunction with the Environmental Impact Statement, Architectural Drawings prepared by Nettleton Tribe, and other supporting documentation submitted with the SSD DA.

2. ASSESSMENT FRAMEWORK

2.1. CLAUSE 4.6 OF MLEP 2011

Clause 4.6 of MLEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6(3) requires that the consent authority consider a written request from the applicant, which demonstrates:

- 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.*

Furthermore, the consent authority must be satisfied that 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, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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.*

This document forms a Clause 4.6 written request to justify the contravention of the floor space ratio development standard in Clause 4.4 of the MLEP 2011. The assessment of the proposed variation has been undertaken in accordance with the requirements of Clause 4.6 exceptions to development standards of the MLEP 2011.

2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, duplicated for ease of consent authority reference as follows:

[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

*[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development**

Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

[15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

[16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

[17] The first and most commonly invoked way is to establish that 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].

[18] A second way is to 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].

[19] A third way is to 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].

[20] A fourth way is to 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].

[21] A fifth way is to 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]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

[22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

[23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see 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 Act, including the objects in s 1.3 of the EPA Act.

[24] The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015]

NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

[25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].

[26] The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).

[27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

[28] The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the *Planning Circular PS 18-003* issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

[29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the *Court Act*. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

The approach outlined by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 has been applied in this written Clause 4.6 request.

3. THE SITE

3.1. SITE DESCRIPTION

The Site is located within the Inner West Local Government Area (**LGA**). The Site is situated approximately 5.5km south-west of Sydney CBD and approximately 2.9km north-east of Sydney International Airport within the suburb of Marrickville.

The Site is legally described as Lot 202 in DP 1133999, Lot 3 in DP 318232 and Lot 3 in DP 180969, commonly known as 74 Edinburgh Road, Marrickville. The Site has an area of approximately 27,315sqm and frontages to both Edinburgh Road (north) and Sydney Steel Road (east). The boundaries of the Site are illustrated at Figure 1.

The Site is bisected by a Sydney Water easement which runs through the northern part of the Site from Sydney Steel Road to the east to the western adjoining Site, 76B Edinburgh Road.

Figure 1 Aerial view of Site



Source: Six Maps

3.2. EXISTING DEVELOPMENT

The Site is located within the industrial area of Marrickville and currently accommodates three large freestanding industrial buildings, three smaller buildings and associated car parking and loading areas. The Site has been subject to multiple stages of industrial development since initial occupation and as such the built improvements across the Site has been progressively developed with warehouse buildings developed on the Site in an *ad hoc* configuration. The Site includes a 'Return and Earn' facility adjacent to Edinburgh Road, which is well utilised and includes a parking area for people using this facility.

3.3. SURROUNDING DEVELOPMENT

The Site is well positioned in terms of access to arterial and main roads, public transport modes of bus and rail, and the retail centre of Marrickville. The Site is located on the northern periphery of the Sydenham industrial lands within Marrickville LGA, which stretches from the airport in the south. This forms part of a large industrial precinct approximately bounded by Edinburgh Road to the north, Railway Parade and the railway line to the east, Marrickville Road/the railway line to the south and Meeks Road/Farr Street/Shepherd Street to the west.

The Industrial precinct includes the following:

- Large free standing industrial buildings.
- Industrial estates including smaller individual warehouse buildings to the south and east.
- Manufacturing, freight, and logistics uses and includes storage facilities, car smash repairs, warehousing and factories.

The Marrickville Metro retail development lies to north of the Site. Residential uses are well separated from the Site to the south and east. The Site is physically separated from the residential area to the north west of the Site by Edinburgh Road. The Site is also located approximately 800 metres from Sydenham Railway Station. Details of the transport network which services the Site are outlined in the Environmental Impact Statement.

Figure 2 The Site and Surrounds



Picture 1 The Site as viewed from Edinburgh Road.



Picture 2 The Site as viewed from Sydney Steel Road.



Picture 3 Development to the north on the corner of Edinburgh Road and Sydney Steel Road



Picture 4 Southern end of Sydney Steel Road.

Source: Urbis

4. BACKGROUND

The Site has development consent for a Masters home improvement centre of approximately 13,350sqm. On 23 October 2015, the Sydney East Joint Regional Planning Panel granted development consent to DA 2015/00168 which comprised the following works:

- Demolition of all existing structures on site and Torrens title subdivision of the site into two lots referred to as Lot 1 and Lot 2.
- Construction of a Masters home improvement store of approximately 13,350sqm, associated vehicle access, loading, on-grade car parking and landscaping on Lot 1.
- Construction of ten industrial units varying from 348sqm to 635sqm, associated vehicle access, loading, on-grade car parking and landscaping on Lot 2.
- Vehicular access from both Edinburgh Road and Sydney Steel Road comprising:
 - The main customer vehicular entry and exit via a fourth signalised approach to the existing traffic signals at Edinburgh Road/Smidmore Street intersection from all directions.
 - Secondary customer entry and exit from Sydney Steel Road to the undercroft parking area.
 - Service vehicle exit via a ramp to Sydney Steel Road.
 - Service vehicle access to the receiving area from both directions via the ramp on Edinburgh Road.
- 466 car spaces including 8 accessible parking spaces located near the customer entry and 6 trailer bay parking spaces.

At the time of approval of DA 2015/00168, the Site was subject to a maximum FSR of 0.95:1. Approval was granted for an FSR of 0.64:1. At present, DA 2015/00168 has not been physically commenced.

5. THE PROPOSED DEVELOPMENT

The SSDA proposes the construction of a new two storey warehouse and distribution facility with associated offices. The proposed development will deliver economic benefits and employment generation for the Inner West and Eastern City District.

Specifically, the SSDA seeks approval for:

- Demolition of the existing buildings, associated structures and landscaping;
- Construction of a two storey warehouse comprising:
 - a speculative warehouse at level 1 (ground level) which can be used as a single tenancy or divided into two separate warehouse tenancies ; and
 - Woolworths semi-automated Customer Fulfillment Centre (CFC) at level 2;
- Construction of associated office space across five levels to be used by CFC workers and WooliesX, a business unit within Woolworths Group Limited, in conjunction with the warehouse and CFC;
- Two storey car park adjacent to Edinburgh Road;
- Two storey hardstand loading and delivery area adjacent Sydney Steel Road;
- Private vehicle access from two points on Edinburgh Road;
- Heavy vehicle / loading vehicle access from four points on Sydney Steel Road; and,
- Tree removal and landscaping works.

Use of the warehouse will be on a 24-hour, 7-day basis, consistent with surrounding operations.

5.1. NUMERIC OVERVIEW

The key numerical aspects of the proposed development are summarised below in Table 1.

Table 1 Numeric Overview of Proposed Development

Component	Proposal
Site Area	28,090sqm (including 514sqm of land subject to a road reservation acquisition order)
Gross Floor Area	CFC: 558m ² CFC Warehouse: 21,000m ² Office: 8,361m ² Spec office: 596m ² Spec warehouse: 8,578m ² Total: 39,093m ²
FSR	1.39:1
Building Height	Maximum height of warehouse: 27.45m Maximum height of office building (including plantroom): 32.32m
Setbacks	Edinburgh Road (north): 3m Sydney Steel Road (east): Varies

Component	Proposal
	Rear setback (south): 400mm Side setback (west): 6m
Loading and Parking	<ul style="list-style-type: none"> ▪ Total staff parking: 371 spaces <ul style="list-style-type: none"> – Accessible: 7 – Standard car: 317 – Spec warehouse (accessible): 1 – Spec warehouse (standard): 46 ▪ Pick-up: 4 ▪ Van parking: 140 ▪ Bicycle parking: 106 spaces
Landscape Area	Total landscaped area: 1,445m ² Tree canopy: 995m ²
Operating Hours	24 hours, 7 days per week

6. EXTENT OF CONTRAVENTION

6.1. DEFINITION OF GROSS FLOOR AREA

Clause 4.4 of MLEP 2011 states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The FSR Map sets a floor space ratio development standard of 0.95:1 for the Site. FSR is to be calculated in accordance with the following definitions within MLEP 2011:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above.*

floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Site area In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or*
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

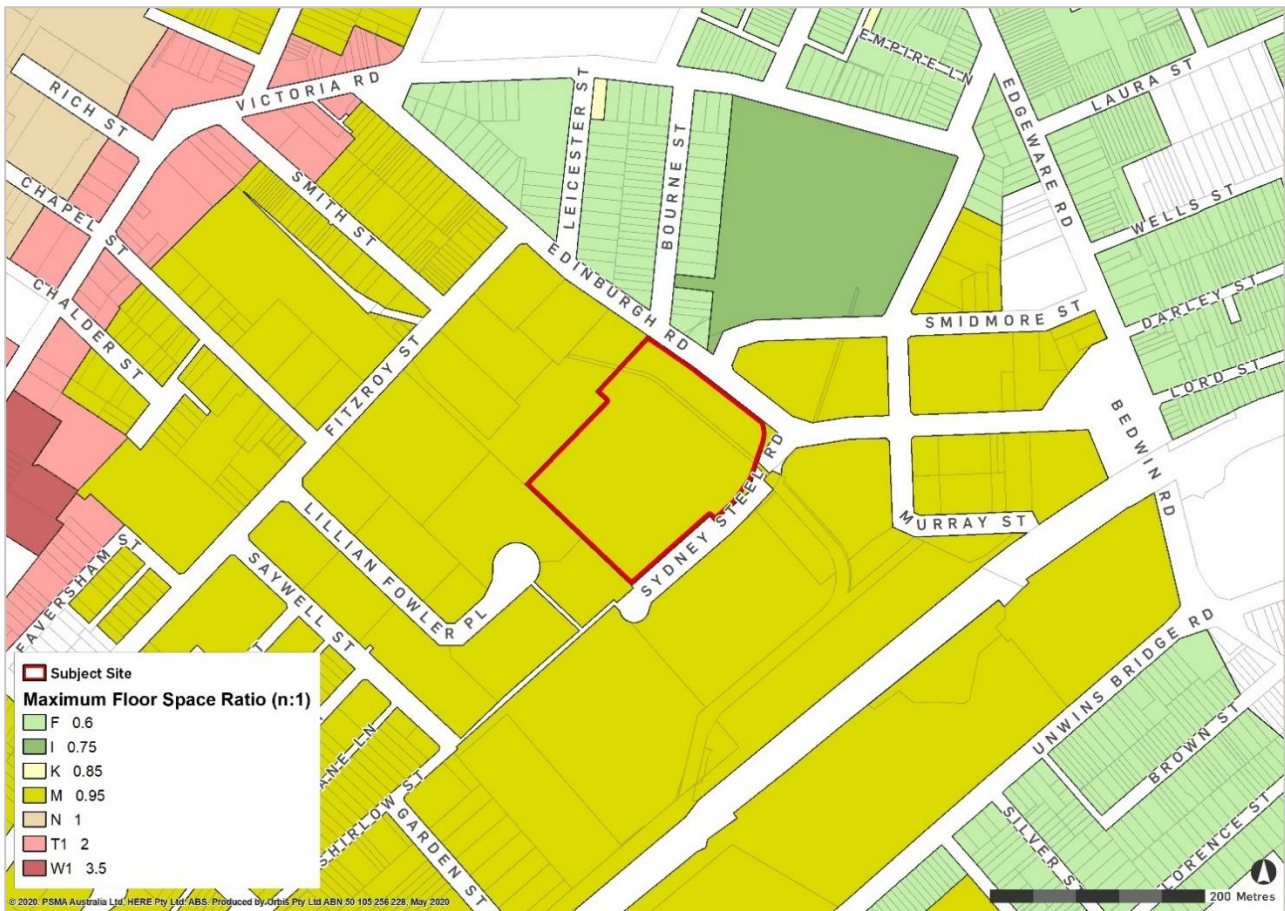
6.2. VARIATION TO FLOOR SPACE RATIO STANDARD

As shown in Figure 3, the relevant FSR Map contained in the MLEP 2011 nominates a maximum FSR of 0.95:1 for the Site. The total gross floor area of the proposed building is 39,093sqm which equates to a floor space ratio of 1.39:1.

Given the nature of the proposed development, the warehouse and CFC require large floor plates to accommodate the proposed semi-automated machinery and inventory. In addition, the ancillary office space is required to accommodate 'WooliesX' which is a business unit within Woolworths Group Limited whose internal operations directly affect the performance of the CFC.

As a result, additional gross floor area is required to ensure the operations of the warehouse CFC run seamlessly and efficiently. Accordingly, the proposal seeks a variation to the proposed FSR development standard.

Figure 3 Floor Space Ratio Map



Source: MLEP 2011 / Urbis

7. CLAUSE 4.6 VARIATION ASSESSMENT

The following sections provide an assessment of the request to vary the development standard relating to the maximum FSR in accordance with Clause 4.6 of the MLEP 2011.

7.1. KEY QUESTIONS

Is the Planning Control a Development Standard?

The floor space ratio control prescribed under Clause 4.4 of the MLEP 2011 is a numeric development standard capable of being varied under Clause 4.6 of MLEP 2011.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6 as it is not listed within Clause 4.6(6) or Clause 4.6(8) of MLEP 2011.

What is the Underlying Object or Purpose of the Standard?

The objectives of Clause 4.4 as set out in Clause 4.4(1) of the MLEP 2011 are:

- (a) to establish the maximum floor space ratio,
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,
- (c) to minimise adverse environmental impacts on adjoining properties and the public domain.

As assessment of the proposed development against the above objectives is provided in Table 2.

7.2. CONSIDERATION

7.2.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common way in which an Applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary is detailed in the ‘five-part test’ outlined in *the Wehbe v Pittwater [2007] NSWLEC 827*. These tests and case law are outlined in Section 2 of this report.

It is not considered necessary for an application to need to establish all of the tests or ‘ways’ a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against three of the Wehbe tests as set out below.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

Notwithstanding the non-compliance with the FSR standard, the proposed development achieves the objective of the FSR development standard (Clause 4.4) as described in Table 2.

Table 2 Assessment of Achievement of Objectives of FSR standard

Objective	Assessment
(a) to establish the maximum floor space ratio.	As discussed above, the main reason for seeking flexibility with the FSR standard is to ensure the proposed development responds to future tenant needs. Given the nature of the proposed warehouse and CFC, large open floor plates are required to accommodate the semi-automated machinery and inventory. The GFA over and above the FSR standard will contribute to the growing floor space needs of the industrial precinct and positively contribute a high quality and

Objective	Assessment
	contemporary industrial development to the IN1 general industrial zone.
<p><i>(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas.</i></p>	<p>The proposed density and bulk of the warehouse, CFC and ancillary office responds to the surrounding industrial context, which predominantly comprises large, free standing warehouses. The additional floor space predominantly relates to the warehouse and CFC and is commensurate in bulk and scale to existing industrial buildings in the local area. It is considered appropriate for an IN1 Zone given the nature of the industrial land use.</p> <p>The proposal minimises the bulk and scale visual effects of the additional GFA by locating the warehouse component at the rear of the Site behind the slender office building and also incorporating landscaping along Edinburgh Road and Sydney Steel Road to soften the built form.</p> <p>The office component of the development has been located to address Edinburgh Road which provides a built form and land use which is appropriate for the interface between the IN1 industrial area, the B Local Centre zoning of the Marrickville Metro site and the R2 Low Density Residential area to the north.</p> <p>When viewed from the public domain, the built form will have an acceptable scale relationship with other existing industrial buildings in the locality.</p>
<p><i>(c) to minimise adverse environmental impacts on adjoining properties and the public domain.</i></p>	<p>The additional GFA being sought under this Clause 4.6 variation request does not give rise to adverse environmental impacts on adjoining properties and the public domain. Visually, the additional built form arising from the proposed FSR variation will be located within the warehouse at the rear of the Site and will not be readily perceptible from the streetscape. As discussed in the Environmental Impact Statement, the additional GFA will not cause overshadowing impacts to nearby residential receivers or public domain areas and will not impact on the efficiency of the existing road network.</p> <p>The site layout will locate uses which generate noise and odour outputs to the south of the Site and shields the more sensitive land uses to the north through the placement and form of the office building form. The additional volume of floorspace on the Site will not exacerbate or accentuate environmental impacts from the Site, and the design has been carefully planned to minimise these impacts.</p>

In summary, achieving compliance with the standard is unreasonable and unnecessary (clause 4.6(3)(a)) as notwithstanding the non-compliance, the development is consistent with the objectives of the standard (clause 4.6(4)(a)(ii)).

Test 2: The underlying objectives or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

Not relied upon.

Test 4: The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Not relied upon.

Test 5: 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

Not relied upon.

7.2.2. Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- The proposed built form is consistent with the existing and future character of the IN1 General Industrial Zone.
- Due to the nature of the proposed use, additional GFA is required to accommodate the proposed machinery and inventory required for the warehouse and CFC operations.
- The warehouse is located towards the rear of the Site, set back approximately 3m from Edinburgh Road with a generous setback for landscape screening, acoustic buffering and vehicle manoeuvring within the staff carpark. This is in keeping with surrounding context and helps prevent adverse environmental and visual impacts associated with the additional GFA.
- The design carefully considers the built form transition from Edinburgh Road to the residential area to the north and the relationship of the Site with the public domain.
- Strict compliance with the development standard would require the removal of the speculative warehouse and office, both important components of the development and aligned to the objectives of the zone in delivering employment opportunities on the Site. Accordingly, supporting the contravention of the development standard will support future employment in the industrial precinct.
- The majority of the additional building bulk is located within the warehouse located towards the south of the Site. This arrangement retains the desired streetscape character of Edinburgh Road and does not dominate the streetscape.
- The overall design integrates landscaping to soften the built form and to improve the Site's interface with the public domain.
- The FSR non-compliance does not compromise the proposal's ability to provide a massing that is responsive to the surrounding public domain and a built form that is architecturally sensitive to surrounding residential properties.
- The proposal is of an appropriate density and land use intensity that can be accommodated on Site without compromising the operation of existing infrastructure and public transport.

7.2.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and 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 development standard as outlined within Section 7.2.1 of this Request. The proposal is also consistent with the land use objective that applies to the site under MLEP 2011 as demonstrated within Table 3 below. The site is located within the IN1 General Industrial zone.

Table 3 Assessment of Compliance with Land Use Zone Objectives

Objective	Applicant Response
<ul style="list-style-type: none"> ▪ <i>To provide a wide range of industrial and warehouse land uses</i> 	The proposed development is consistent with the objective of the zone as it provides an industrial and warehouse land use within an IN1 General Industrial Zone.
<ul style="list-style-type: none"> ▪ <i>To encourage employment opportunities</i> 	Upon completion of the proposed development, it is estimated up to 660 full time equivalent jobs will be generated by the development. Reducing the GFA would require the removal of the speculative warehouse and office component which would significantly reduce the number of jobs generated by the proposed development.
<ul style="list-style-type: none"> ▪ <i>To minimise any adverse effect of industry on other land uses</i> 	As discussed in the Environmental Impact Statement, the proposed GFA and built form is consistent with surrounding industrial buildings. There will be no adverse overshadowing, view or traffic impacts on surrounding land uses.
<ul style="list-style-type: none"> ▪ <i>To support and protect industrial land for industrial uses</i> 	The proposal delivers 30,136sqm of warehouse space on the Site (this includes the CFC, warehouse and spec warehouse).The proposal protects existing industrial land by retaining the existing land zoning and proposing a predominantly industrial development. The ancillary office space is directly associated with the warehouse operations and therefore will not detract from the underlying objective of the land use zone which is to provide a range of industrial, warehouse and related land uses.
<ul style="list-style-type: none"> ▪ <i>To protect industrial land in proximity to Sydney Airport and Port Botany</i> 	The proposal retains the existing industrial land use. The Site is located in a highly accessible location, mid-way between Sydney Airport and Western Sydney which will facilitate safe, efficient and reliable journeys between the Site, online customers and supermarkets across Sydney.
<ul style="list-style-type: none"> ▪ <i>To enable a purpose-built dwelling house to be used in certain circumstances as a dwelling house</i> 	N/A.

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard and the land use objectives of the zone as discussed in Table 2 and Table 3.

7.2.4. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

7.2.5. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the development standard and the land use zoning objectives despite the non-compliance. The proposed variation is largely due to the nature of the proposed land use which requires large, open floor plates.

The proposed development achieves the objectives of the FSR development standard and the land use zoning objectives despite the non-compliance. The strict application of the FSR development standard would prevent the orderly development of the Site to provide a warehouse, CFC and office that will facilitate faster and more reliable delivery services in a retail climate whereby online grocery sales are growing significantly.

Furthermore, the additional GFA is in the public interest because it will allow for the provision of a spec warehouse and ancillary office which will provide significant employment opportunities in the long term (approximately 660 jobs).

It has been demonstrated that the proposed variation will not result in any adverse environmental impact on the neighbourhood amenity and streetscape. Given the nature of the proposed variation and the justification of the impacts provided within this statement and accompanying SEE, the proposal is consistent with the public interest as it promotes the orderly and efficient use of land. Maintaining the development standard would not result in a public benefit.

7.2.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

8. CONCLUSION

This request seeks to vary the maximum FSR development standard prescribed for the Site under Clause 4.4 of the MLEP 2011. MLEP 2011 prescribes a maximum FSR of 0.95:1. The proposed development has a maximum FSR of 1.39:1. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances because:

- The proposed development achieves the objectives of the development standard and the land use zoning objectives despite the non-compliance.
- The proposed variation is largely due to the nature of the proposed land use which requires large, open floor plates.
- The strict application of the FSR development standard would prevent the orderly development of the Site to provide a warehouse, CFC and office that will facilitate faster and more reliable delivery services in a retail climate whereby online grocery sales are growing significantly.
- The additional GFA will allow for the provision of a spec warehouse and ancillary office which will provide significant employment opportunities in the long term.
- It has been demonstrated that the proposed variation will not result in any adverse environmental impact on the neighbourhood amenity and streetscape.
- The FSR non-compliance does not compromise the proposal's ability to provide a massing that is responsive to the surrounding public domain and a built form that is architecturally sensitive to surrounding residential properties.
- The proposal is of an appropriate density and land use intensity that can be accommodated on Site without compromising the operation of existing infrastructure and public transport.

For the reasons outlined above, the development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the FSR standard. In the circumstances of this case, flexibility in the application of the FSR development standard should be applied.

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