



Variation Report

Floor Space Ratio

135 Badgerys Creek Road | SSD-77458970

Submitted to the Department of Planning, Housing and Infrastructure
on behalf of Bradfield Corporation Pty Ltd.

Prepared by Colliers Urban Planning

21 November 2025 | 2240375



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron



'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Colliers Urban Planning acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past and present.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

This Variation Report has been prepared by Colliers Urban Planning on behalf of Bradfield Corporation Pty Ltd. (the Applicant). It is submitted to the Department of Planning, Housing and Infrastructure (DPHI) in support of a State Significant Development Application (SSDA) for a new mixed use development at 135 Badgerys Creek Road (the site).

Section 4.39 of the State Environmental Planning Policy (Precincts—Western Parkland City) 2021 (Western Parkland City SEPP) enables the consent authority to grant consent to development even though it would contravene a control in the Western Sydney Aerotropolis Precinct Plan (Precinct Plan). This Variation Report relates to the floor space ratio (FSR) control imposed under Section 5.3 of the Precinct Plan. This Report should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Colliers Urban Planning and associated appendices.

The objectives of Section 4.39 of the Western Parkland City SEPP is to provide an appropriate degree of flexibility in applying certain standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.39 requires that development consent must not be granted to development unless the consent authority is satisfied the applicant has demonstrated that:

- The inconsistency is minor (Section 4.39(2)(a)(i));
- Consistency with the Precinct Plan is unreasonable or unnecessary in the circumstances (Section 4.39(2)(a)(ii), and
- There are sufficient environmental planning grounds to justify the inconsistency (Section 4.39(2)(a)(iii)).

This document demonstrates that compliance with the Precinct Plan is minor, that strict consistency is unreasonable or necessary and that there are sufficient environmental planning grounds to justify the inconsistency. As such, this document satisfies the provisions of clause 35B(2) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).

This Variation Request demonstrates that, notwithstanding the non-compliance the proposed development:

- Achieves the objectives of Section 5.3 of the Precinct Plan which support the delivery of employment, business, social and residential uses within close proximity to public transport.
- The inconsistency is minor, in that the excess is 616.2m² or 0.87% over the permitted FSR control and entirely located within the basement of the building which is not perceivable and does not result in any additional environmental impacts.
- Is supported by sufficient environmental planning grounds to justify the contravention including:
 - The proposed FSR and massing strategy has been supported by the GANSW. The design presents as a responsive and appropriate built form outcome.
 - The non-compliance is technical in nature and the proposal provides a compliant quantum of floor space allowable for the site, with the exception of 616.2m² dedicated to car parking facilities which is entirely located within the basement and is therefore not perceivable.
 - The quantum of car parking spaces provided adheres to contemporary leasing requirements and variation to this would result in an unviable design from a leasing perspective.
 - The excess GFA created by the car parking is located entirely within the basement, not perceivable from the public domain and does not result in any significant environmental impacts such as overshadowing, visual or view impacts.
 - Alternative designs to reduce GFA elsewhere in the building would contravene the intent of the Precinct Plan and Government policies such as the National Housing Accord.

- Rather, the develop seeks to adopt the flexibility provided under Section 4.39 of the Western Parkland City SEPP, demonstrating that the inconsistency with the standard is appropriate in this circumstance.

Therefore, this SSD may be approved with the variation as proposed in accordance with the flexibility allowed under Section 4.39 of the Western Parkland City SEPP.

1.1 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation or inconsistency to a standard should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a) or any other equivalent provisions in other environmental planning instruments such as Section 4.39 of the Western Parkland City SEPP.

Further guidance on clause 4.6 of the Standard Instrument or other equivalent provisions has been provided by the Land and Environment Court in a number of decisions, including but not limited to:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Variation Request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the inconsistency (**Section 3.0**);
- Demonstrates consistency with Section 4.39 (**Section 4.0**), including:
 - The inconsistency with the Precinct Plan is minor (**Section 4.1**);
 - Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.2**); and
 - Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 4.3**).

2.0 The Site and Proposed Development

2.1 The Site

The site is located at 135 Badgerys Creek Road, Bradfield and is legally described as Lot 7 DP 243457. The site is generally rectangular in geometry with a site area of approximately 2.02 ha. It currently shares a western frontage to Badgerys Creek Road of approximately 72m and has a depth of approximately 280m.

The site is vacant of built form and is characterised by dense vegetation located along the western boundary and a creek line (Gung Gung Creek) that runs across the site in a northwest to southeast direction. A site aerial map is provided in **Figure 1**.



Figure 1 Site aerial map

Source: Nearmap / edited by Colliers Urban Planning

As defined by the Aerotropolis Precinct Plan, the site is located within the Aerotropolis Core Precinct which is envisioned as an attractive place for workers, residents and visitors. The Aerotropolis Core Precinct will leverage the positive economic impact of the adjacent Western Sydney Airport and the nearby metropolitan clusters of Greater Penrith, Liverpool and Campbelltown-Macarthur. It will attract business hubs, research and development, professional services and creative industries in addition to providing residential development within walking distance of the Bradfield Metro station and proximity to blue and green infrastructure.

More specifically, in accordance with Section 5.1 of the Aerotropolis Precinct Plan the site is located within the Metropolitan Centre of the Aerotropolis Core Precinct. The role of the Metropolitan Centre is to support multi-purpose development with a diversity of uses, including residential density whilst supporting capacity for employment and services such as supermarkets, social infrastructure, health services and commercial offices.

The site's location within the Aerotropolis Core Precinct is shown in **Figure 2**.

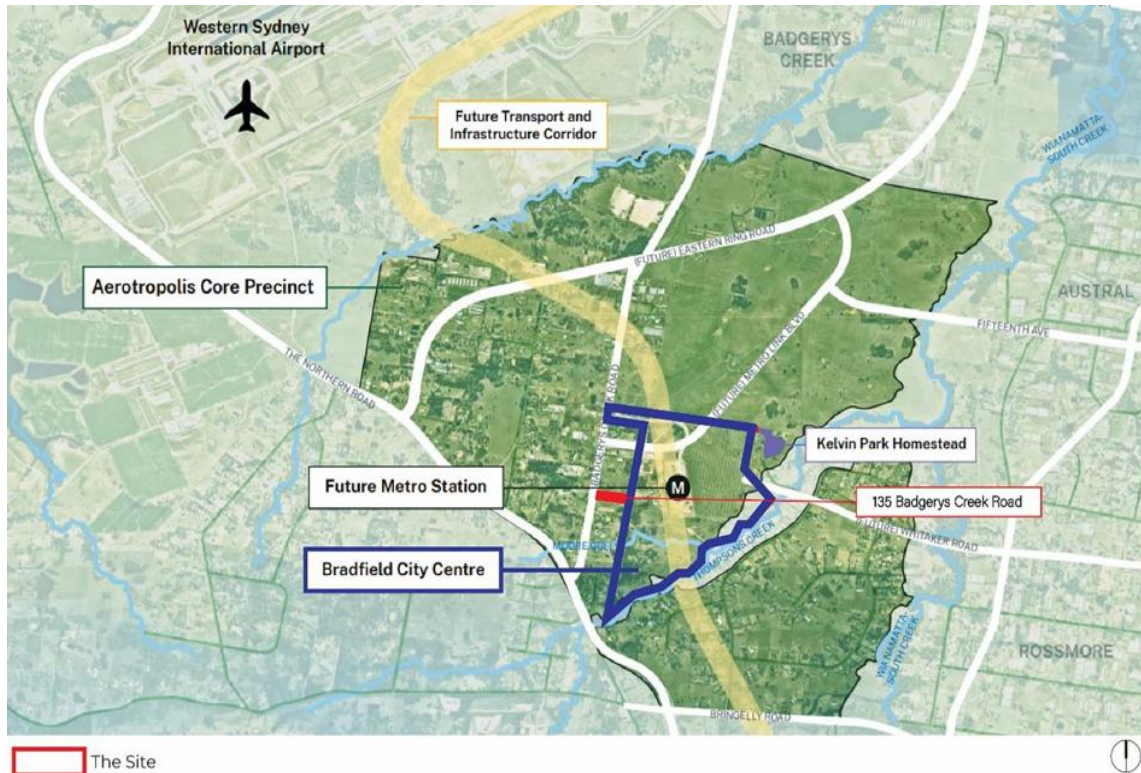


Figure 2 Site location within Aerotropolis Core Precinct

Source: Bradfield City Centre Masterplan / edited by Colliers Urban Planning

2.2 Description of the Proposed Development

The Applicant will seek development consent under ‘Division 4.7 – Stage Significant Development’ of the Environmental Planning and Assessment Act 1979 (EP&A Act) for a new mixed-use development involving two new hotels comprising a total of 445 rooms, 402 new residential units, a series of new commercial tenancies and a supermarket, a new gym, childcare centre and health service facility over three buildings. Specifically, this SSDA seeks approval for:

- Enabling works including vegetation removal, remediation works and bulk excavation;
- The construction of three buildings, comprising:
 - Residential use, including 402 apartment units;
 - Hotel use, including 445 hotel rooms;
 - Commercial use, including a new supermarket, food and drink premises, co-working spaces and other commercial uses;
 - A new gym;
 - A health service facility;
 - A centre-based childcare centre;
- Construction of two basement structures to accommodate 775 carparking spaces and 676 bicycle parking spaces;
- The rehabilitation and augmentation of the riparian corridor known as Gung Gung Creek;
- Public domain upgrades, including new publicly accessible open space along the existing riparian corridor, and the construction of an internal local road and new public plaza;
- Landscaping embellishments along the ground floor and within key components of the building;
- Provision of new services and augmentation of existing services as required; and
- Provision of new interim and ultimate civil infrastructure.

An aerial render of the proposed development is provided in **Figure 3** below.



Figure 3 *Aerial of the proposed development, viewed from the southeast*

Source: Plus Studio



Figure 4 *Building A (right) and Building B (left) viewed from the south*

Source: Plus Studio



Figure 5 *Building C viewed from Gung Gung Creek*

Source: Plus Studio

2.3 Key project Details

The key project details regard the proposal are outlined in **Table 1** below.

Table 1 *Key project details*

Component	Description
Proposed Land Use	<p>The proposed development is a mixed-use development, comprising the following uses:</p> <p>Stage 1</p> <ul style="list-style-type: none"> • Hotel or motel accommodation • Retail premises • Food and drink premises <p>Stage 2</p> <ul style="list-style-type: none"> • Retail premises • Medical centre • Recreation facility (indoor) • Hotel or motel accommodation • Commercial premises • Centre-based childcare facility • Shop top housing <p>Stage 3</p> <ul style="list-style-type: none"> • Retail premises • Residential flat building
Legal Description	Lot 7 DP 243457
Site Area	20,237m ²

Component	Description		
GFA	Residential	41,588m ²	
	Retail	4,549m ²	
	Food and drink premises	1,263m ²	
	Hotel	17,399m ²	
	Childcare	1,466m ²	
	Commercial	1,179m ²	
	Medical centre	1,913m ²	
	Recreation facility (indoor)	887m ²	
	Total	71,345m ²	
FSR	3.53:1		
Maximum Height	Building	Maximum Roof Height	Maximum Plan/Lift Overrun Height
	Building A	40.535m	40.565m
	Building B	40.790m	41.805m
	Building C	41.170m	41.475m
Car spaces	Building A	74 spaces	
	Building B	416 spaces	
	Building C	285 spaces	
	Total	775 spaces	
Bicycle Spaces	676		
Apartment Mix	1 Bedroom	53 (13.2%)	
	2 Bedroom	277 (68.9%)	
	3 Bedroom	72 (17.9%)	
	Total	402 dwellings	
Communal Open Space	7,292m ² (36%)		
Landscaped Area	2,973m ² (14.7%)		
Deep Soil Area	2,973m ² (14.7%)		
Construction Hours	Monday to Friday – 7:00am to 6:00pm Saturdays – 8:00am to 1:00pm Sundays and Public Holidays – No works.		
Operational Hours (Indicative – subject to separate planning application)	Land use	Hours	
	Residential	N/A	
	Hotel reception	24/7	
	Hotel restaurant	7:00am – 10:00pm Monday to Saturday	
		7:00am – 8:00pm Sunday or public holiday	
	Retail	7:00am – 10:00pm Monday to Saturday	
		7:00am – 8:00pm Sunday or public holiday	
	Medical centre	8:00am – 6:00pm Monday to Sunday	
Commercial	7:00am – 7:00pm Monday to Friday		
Gym	Operation: 24/7 Staffed hours: 8:00am – 8:00pm Monday to Friday and 8:00am – 5:00pm Monday to Friday		

Component	Description
	Co-working spaces 24/7
	Food and beverage 7:00am – 10:00pm Monday to Saturday 7:00am – 8:00pm Sunday or public holiday
	Childcare centre 7:00am - 6:00pm Monday to Friday
Construction Jobs	142 FTE construction jobs
Operational Jobs	600 FTE operational jobs

3.0 Inconsistency with Precinct Plan

3.1 Relevant Floor Space Ratio Control

This Variation Report seeks to justify the contravention of the FSR development standard contained in Section 5.3 of the Precinct Plan.

For background, Requirement FS1 of the Precinct Plan states:

Buildings are not to exceed the maximum FSR shown on the Floor Space Ratio Map in Figure 13.

Under Figure 13 of the Precinct Plan, the site is subject to an FSR control of 3.5:1 as shown in **Figure 6**.

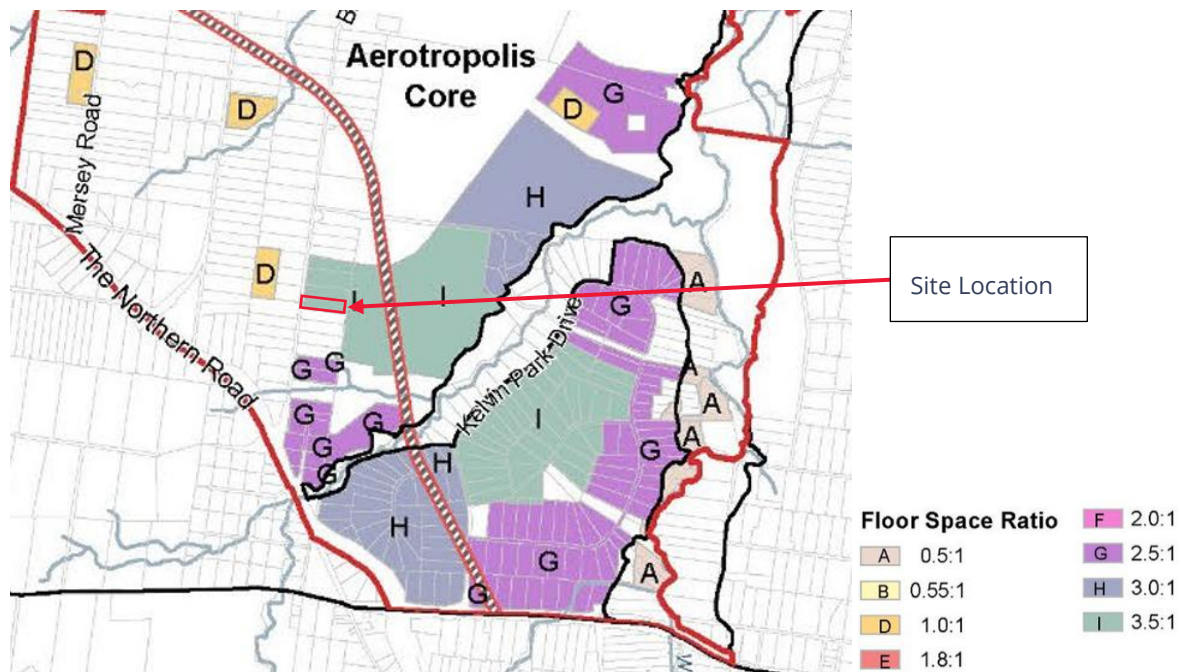


Figure 6 Extract of FSR Map

Source: Precinct Plan

3.2 Variation Sought

The site has an area of 20,237m². In accordance with the applicable FSR control of 3.5:1, the site is permitted a maximum GFA of 70,829m². The proposed development achieves a total GFA of 71,446m², or a total FSR of 3.53:1. This represents a variation of 617m² of GFA (equivalent to 0.87%) above the permitted FSR.

The additional GFA is not attributed to any certain component of the development. However, it is recognised that an additional 747.9m² of GFA is created from excess car parking within the basement that exceeds the maximum parking rates of the Western Sydney Aerotropolis Phase 2 DCP (WSA DCP)). After accounting for this component, 617m² contributes to the extent of GFA over the 3.5:1 FSR control.

The additional car parking is considered necessary to meet contemporary leasing and operational requirements of the proposed anchor supermarket and hotel operators. The provision of this parking is therefore an integral element in ensuring the commercial viability and operational performance of the overall development.

4.0 Justification for Contravention of the Development Standard

Section 4.39 of the Western Parkland City SEPP provides that:

(1) Development consent must not be granted to development on land to which a precinct plan applies unless the consent authority is satisfied that the development is consistent with the precinct plan.

(2) Subsection (1) does not apply if—

(a) the consent authority has considered a written request from the applicant that seeks to justify an inconsistency by demonstrating that—

(i) the inconsistency is minor, and

(ii) consistency with the plan is unreasonable or unnecessary in the circumstances, and

(iii) sufficient environmental planning grounds justify the inconsistency.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action)

Role of the consent authority

The role of the consent authority in considering this request for a variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority being satisfied that the applicant's written request has adequately addressed the matters in clause 4.6(4)(a)(i) or an equivalent provision in other environmental planning instruments.

The consent authority is required to form this opinion first before it considers the merits of the SSDA and it can only consider the merits of the SSDA if it forms the required satisfaction in relation to the matter. In particular, the consent authority needs to be satisfied that there are sufficient environmental planning grounds to grant consent and that the contravention of the standard is justified.

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters contained in Section 3.19 of the Western Parkland City SEPP, with respect to the FSR development standard, are each addressed below, including with regard to these decisions.

4.1 Section 4.39(2)(a)(i): The inconsistency is minor

The extent of the inconsistency with the FSR control is equivalent to 0.87% or 616.7m² above the FSR control and is considered minor when viewed in the context of the overall scheme, which has a maximum allowable GFA of 70,829m². Furthermore, due to the technical method used to calculate gross floor area, an additional 747.9m² of GFA is created by provision of car parking that exceeds maximum rates under the WSA DCP. As a result, the development exceeds the FSR control by 617m², which can be attributed entirely to the excess parking supply.

Notably, this additional GFA is located within the basement of the building and does not contribute to any perceived increase in building bulk and scale. Given that the inconsistency is less than 1% and has no visual or amenity impact, it is considered minor.

4.2 Section 4.39(2)(a)(ii): Consistency with the Precinct Plan is unreasonable or unnecessary in the circumstances

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

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 or an equivalent provisions where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in Section 4.39 of the Western Parkland City SEPP is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Variation Request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This Variation Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the FSR development standard pursuant to the First Method.

4.2.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

Section 5.3 of the Precinct Plan

Section 5.3 of the Precinct Plan provides for the following objectives:

- FSO1 FSR controls are to create an appropriate mix of employment, business, social and residential development in the Mixed Use zone, and Local and Neighbourhood Centres (refer to Figure 13)
- FSO2 Achieve a density of employment in mixed use areas to ensure residential uses are not the predominant use (refer to the Yield and Density Targets established in section 5.4).
- FSO3 Locate higher intensity mixed use employment and residential densities within 800m of the Metro station.

4.2.1.1 Objective FSO1: FSR controls are to create an appropriate mix of employment, business, social and residential development in the Mixed Use zone, and Local and Neighbourhood Centres (refer to Figure 13)

The proposed development seeks to deliver a series of employment, business and residential development as envisioned under the Aerotropolis Core principles. Specifically, the development includes 29,809m² of non-residential GFA provided through two hotels, ground floor retail premises, co-working office space, a childcare, a medical tenancy, a gym and food and drink premises. This equates to approximately 42% of the development's total GFA attributed towards non-residential uses, with the remaining 58% attributed towards residential uses. The near equal split between residential and non-residential demonstrates the development contribution towards supporting a mixture of employment, business, social and residential development within the Mixed Use zone.

4.2.1.2 Objective FSO2 Achieve a density of employment in mixed use areas to ensure residential uses are not the predominant use (refer to the Yield and Density Targets established in section 5.4).

As demonstrated above, the development provides substantial employment generating floor space through a variety of uses including two hotels, ground floor retail premises, co-working office space, a childcare, a medical tenancy, a gym and food and drink premises. The proportional split between residential and non-residential floor space is close to 50/50 which is considered appropriate and aligned with the principles of this objective. This contribution of employment uses is considered appropriate given the current context of surrounding area, being largely undeveloped and untested in terms of an appropriate residential/non-residential split and associated feasibility implications.

4.2.1.3 Objective FSO3 Locate higher intensity mixed use employment and residential densities within 800m of the Metro station.

The proposed development is consistent with this objective in that it delivers a substantial quantum of employment and residential floor space to land within 800m walking distance of the Bradfield Metro Station.

4.2.1.4 Conclusion to Section 4.39(2)(a)(ii)

The above section demonstrates that compliance with the FSR standard under Section 5.3 of the Precinct Plan is unreasonable or unnecessary in the circumstances of the case. The objectives of the applicable standard have been achieved by the proposed development, notwithstanding the minor non-compliance with the mapped FSR control.

4.3 Section 4.39(2)(a)(iii): sufficient environmental planning grounds justify the inconsistency

Under Section 4.39(2)(a)(iii) of the Precinct Plan, the consent authority must be satisfied the Variation Request has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request or an equivalent provision must be particular to the circumstances of the proposed development on that site at [60].

There are sufficient environmental planning grounds to justify contravention of FSR development standard in this specific instance, as described below.

4.3.1 Design and Form

The proposed development provides a built form outcome generally envisioned under the Precinct Plan and WSA DCP. Additionally, the proposed development has been subject to numerous independent reviews by the Government Architect (GANSW) during the State Design Review Panel (SDRP) process.

Specifically, at the latest SDRP session, the panel acknowledge that the revised site layout and massing aligned closely to the design envisioned under the relevant planning controls.

The project is a strong and thoughtful revision of the initial scheme. The updated site layout, building heights, and overall strategic approach now align more closely with the objectives of the Precinct Plan and the broader vision for the Western Sydney Aerotropolis.

Whilst a series of recommendations were provided by the GANSW, none of these relates to the overall quantum of GFA provided, nor its contribution towards the overall bulk and scale of the development which is an outcome of FSR.

Overall, the development remains to exhibit design excellence and has received in-principal support from the GANSW. A response to all remaining comments provided by the GANSW is provided within the Architectural Design Report.

4.3.2 Provision of Car Parking Spaces

Whilst an excess of GFA cannot be allocated to a single feature of the building, it is recognised that the development generates 747.9m² of additional GFA through providing car parking above the maximum rates in the WSA DCP, which, if removed, would result in the development being compliant with the FSR control. Only 617m² of that 747.9m² of car parking GFA exceeds the 3.5:1 FSR control.

Nevertheless, the non-compliance is technical in nature and the proposal provides a compliant quantum of floor space allowable for the site, with the exception of 617m² which is created by additional car parking supply and contributes towards exceeding the 3.5:1 FSR control. This is entirely located within the basement and is therefore not perceivable. The quantum of car parking provided as a whole reflects the contemporary commercial leasing requirements which sit outside the controls of the WSA DCP parking rates. This approach is considered appropriate as the surrounding context is yet to come to fruition and the provision of public and active transport is yet to be delivered, thereby relying on car parking until the surrounding context is developed further and public and active transport is delivered in the short timeframe. Without such facilities, the building's viability as a leasable property would be impacted, given the significant quantum of retail and other non-residential floor space delivered in the development which relies upon car parking as a temporary method of users travelling to the site.

4.3.3 Environmental Impacts

The proposed FSR and resulting massing strategy does not cause adverse environmental impacts which would render it incompatible with the future surrounding land uses and ensures the proposal is appropriate for the context of the site. As outlined above, the GFA generated by the excess car parking is located entirely within the basement of the development and does not contribute towards the visual bulk and scale of the development. Whilst the additional floor area does constitute as GFA, it neither contributes towards the bulk of the building, nor adds any density to the building. Given that one of the primary purposes of the FSR standard is to effectively control bulk, the environmental issues identified above constitute environmental planning grounds to justify the breach of the standard. The development, as a whole, remains to delivering a suitable quantum of FSR, corresponding to an appropriate built form for the local context, being close to exceptional public transport (Metro Station), amenities and services. The excess GFA within the basement, does not result in any significantly environmental impacts such as overshadowing, visual impact from the public domain or privacy outlook impacts from future residents.

4.3.4 Alternative Designs

Alternative options were considered including an FSR compliant design. However, this design does not align with the strategic directions imposed under the Precinct Plan and higher order Government policies. As the additional GFA within the basement is a result of the disconnect between contemporary leasing requirements and the WSA DCP controls, alternatives of reducing GFA within the residential and non-residential components were considered but not progressed. These alternative designs would result in the reduction or loss of retail tenancies which contribute towards ground level activation and a human scale, the reduction or loss of commercial floor space which result in a decrease of employment generating activities or a loss or decrease of residential dwellings which is inconsistent with the intent to deliver housing close to transport nodes. These outcomes would sabotage the intent of delivery employment floor space, as set out in the Precinct Plan as well as the intent to deliver additional housing close to transport and services as set out in the National Housing Accord.

Overall, rather than removing and decreasing these essential items, the development seeks to utilise the flexible provisions in Section 4.39 of the Western Parkland City SEPP, demonstrating that a better outcome can be achieved under this scenario.

4.3.5 Conclusion to Section 4.39(2)(a)(iii)

There are sufficient environmental planning grounds to justify the contravention of the maximum FSR standard.

- The proposed FSR and massing strategy has been supported by the GANSW. The design presents as a responsive and appropriate built form outcome.
- The non-compliance is technical in nature and the proposal provides a compliant quantum of floor space allowable for the site, with the exception of 747.9m² dedicated to car parking facilities which is entirely located within the basement and is therefore not perceivable. Only 617m² of that 747.9m² of car parking GFA exceeds the 3.5:1 FSR control.
- The quantum of car parking spaces provided adheres to contemporary leasing requirements and variation to this would result in an unviable design from a leasing perspective.
- The excess GFA created by the car parking is located entirely within the basement, not perceivable from the public domain and does not result in any significant environmental impacts such as overshadowing, visual or view impacts.
- Alternative designs to reduce GFA elsewhere in the building would contravene the intent of the Precinct Plan and Government policies such as the National Housing Accord.
- Rather, the develop seeks to adopt the flexibility provided under Section 4.39 of the Western Parkland City SEPP, demonstrating that the inconsistency with the standard is appropriate in this circumstance.

5.0 Conclusion

The assessment above demonstrates that strict compliance with the FSR standard contained in Section 5.3 of the Precinct Plan is unreasonable and unnecessary in the circumstances and that the inconsistency is minor and supported by sufficient environmental planning grounds. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This Variation Report demonstrates that, notwithstanding the inconsistency with the FSR standard, the proposed development:

- Achieves the objectives of Section 5.3 of the Precinct Plan which support the delivery of employment, business, social and residential uses within close proximity to public transport.
- The inconsistency is minor, in that the excess is 617m² or 0.87% over the permitted FSR control and entirely located within the basement of the building which is not perceivable and does not result in any additional environmental impacts.
- Is supported by sufficient environmental planning grounds to justify the contravention including:
 - The proposed FSR and massing strategy has been supported by the GANSW. The design presents as a responsive and appropriate built form outcome.
 - The non-compliance is technical in nature, and the proposal provides a compliant quantum of floor space allowable for the site, with the exception of 617m² of less than 1% over the permitted FSR control. This is created through excess car parking located in the basement which generates a total of 747.9m² of GFA. Only 617m² of that 747.9m² of car parking GFA exceeds the 3.5:1 FSR control.
 - The quantum of car parking spaces provided adheres to contemporary leasing requirements and variation to this would result in an unviable design from a leasing perspective.
 - The excess GFA created by the car parking is located entirely within the basement, not perceivable from the public domain and does not result in any significant environmental impacts such as overshadowing, visual or view impacts.
 - Alternative designs to reduce GFA elsewhere in the building would contravene the intent of the Precinct Plan and Government policies such as the National Housing Accord.
 - Rather, the develop seeks to adopt the flexibility provided under Section 4.39 of the Western Parkland City SEPP, demonstrating that the inconsistency with the standard is appropriate in this circumstance.

Therefore, the consent authority can be satisfied that this Variation Request has demonstrated the matters in Section 4.39 of the Western Parkland City SEPP and may grant development consent notwithstanding the contravention of the FSR development standard.