

Attachment D

Clause 4.6 Variation Request - Floor Space Ratio
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Clause 4.6 Variation

Clause 4.4 Floor Space Ratio – Sydney LEP 2012
20-26 Bourke Road, Alexandria

Prepared for City West Housing

07.04.26
24162

Beam Planning acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia. We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we work with.

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Executive Summary

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (Sydney LEP) enables the consent authority to grant consent for development even though it contravenes a development standard. Its objectives are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clauses 4.6(3) requires 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:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- There are sufficient environmental planning grounds to justify the contravention of the development standard.

The table below provides a summary of the key matters required in a Clause 4.6 Variation set out in the Department of Planning and Environments *Guide to Varying Development Standards November 2023*.

Where is the development site?	20-26 Bourke Road, Alexandria
What is proposed development?	The proposed development is for the redevelopment of an industrial site in Alexandria to deliver a new 15 storey residential building comprising 161 affordable housing dwellings, ground level commercial and community facilities, and associated landscaping and public domain works. The development also seeks to retain the existing Mecca building on site, which is currently used for the purposes of a coffee roasting facility and café.
What is the variation?	The proposed development has a maximum floor space ratio (FSR) of 3.81:1, which represents a 0.31:1 (8.9%) variation to the current maximum permissible floor space ratio (FSR) of 3.5:1, which includes the base 2:1 FSR, and the additional community infrastructure floor area bonus of 1.5:1. This variation is the outcome of a delay in the implementation the proposed Sydney Housekeeping Amendments, which introduces changes to the Sydney LEP 2012 and the Sydney Development Control Plan 2012 (Sydney DCP 2012), including updates to Clause 6.21D that allow the 10% FSR bonus to be granted to developments demonstrating design excellence, including social and affordable housing projects that have undergone an alternative design excellence process. This would permit an FSR of up to 3.85:1, which the proposal entirely complies with. As these amendments have been endorsed and are expected to be finalised shortly within the near future, the design reflects the application of the bonus, as the project has undergone an extensive design excellence process. As such, this Clause 4.6 Variation request addresses the current variation, while recognising the forthcoming controls that would result in a fully compliant building.
Why is compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case?	The proposal achieves the objectives of Clause 4.4 Floor Space Ratio standard under the Sydney LEP 2012, notwithstanding the non-compliance as: • The floor space ratio is appropriate to the condition of the site and its context, and will assist in meeting housing demand. • The proposal will not result in any unreasonable traffic impacts and remains consistent with the envisaged density of development, built form and land uses for the precinct. • The development has been designed accordingly to reflect the desired character of the precinct and minimises adverse impacts on the amenity of the locality.
What are the sufficient environmental planning grounds to justify contravention of the development standard?	The environmental planning grounds to justify contravention of the FSR standard are: • There are imminent changes to the LEP that would allow the additional 10% FSR bonus to be achieved on the site through an alternative design excellence process for social and affordable housing. The design is a direct result of a rigorous and comprehensive design excellence process undertaken in collaboration with Council and the Design Advisory Panel (DAP), who have ultimately confirmed in a Design Statement that the project demonstrates the potential to achieve design excellence. • The FSR variation will not result in any adverse environmental impacts, particularly in terms of visual impact and overshadowing. • The provision of affordable housing is directly aligned with several NSW strategic planning objectives and will assist in alleviating the current housing crisis, and strict compliance with the controls will reduce the number of affordable dwellings on the site by 24 dwellings, which would otherwise provide housing for 34-68 people. In light of the above that the consent authority can be satisfied that there are sufficient grounds to support the proposed variation.

1.0 The Development Site

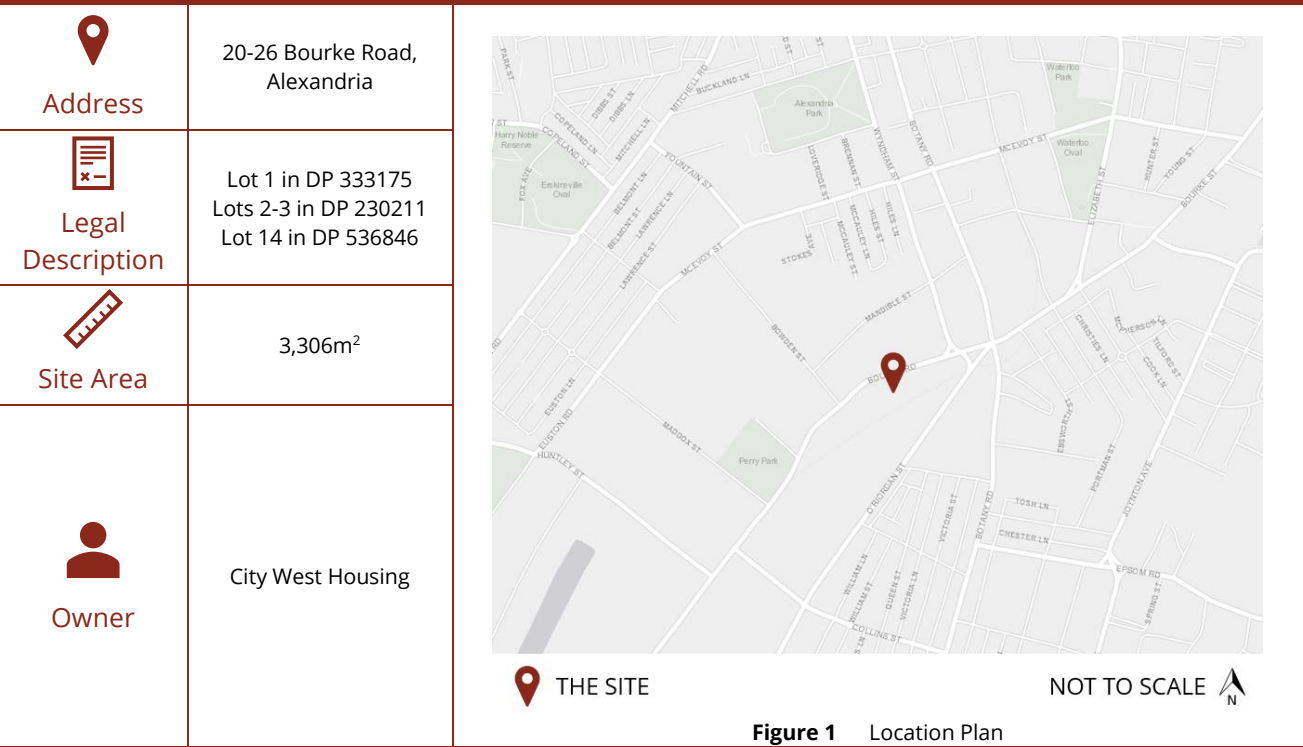


Figure 1 Location Plan



Figure 2 Aerial Photo

2.0 The Proposed Development

The proposed development involves a new mixed-use development, comprising non-residential uses at the ground level and affordable housing above, as well as the retention of the existing Mecca Coffee Café.

Specifically, the proposed works include:

- Early works and site preparation, including excavation and demolition of existing structures at 20-24 Bourke Road.
- Retention of the existing building and use of the Mecca Coffee Café at 26 Bourke Road, with minor alterations to the rear carparking area.
- Construction of a new 15-storey mixed use development with a maximum building height of 51.4m and total gross floor area of 12,019m², comprising:
 - 199m² of non-residential floor space at the ground level, including a commercial premise and community facility.
 - 11,820m² residential floor space, comprising a total of 161 dwellings, including 4 terrace apartments, from Level 1 and above which will be used for the purpose of 100% social and affordable housing.
- Ground floor parking and loading bay, comprising 14 residential and 2 service vehicle car parking spaces and 182 bicycle spaces.
- Vehicular access provided via Bourke Road.
- Associated landscaping and public domain works, including footpath and laneway widening and embellishments.
- Consolidation of the existing lots and subdivision to facilitate dedication of land to Council and future ownership.
- Extension and augmentation of physical infrastructure and utilities as required.
- Remediation of land.

Architectural Drawings and a Design Report prepared by Bates Smart illustrating the proposed development are included within the DA. An artist's impression of the proposed development is shown at **Figure 3** below.



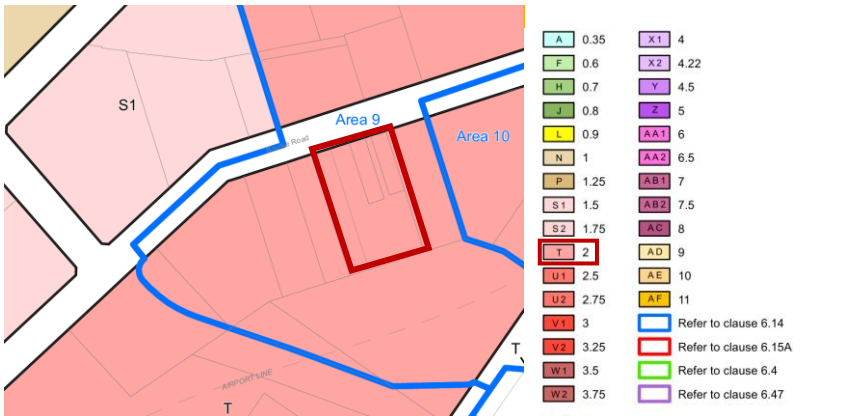
Figure 3 Artist's impression of the proposed development

Source: Bates Smart

3.0 The Proposed Variation

This section outlines the relevant environmental planning instrument (EPI), the development standard to be varied and proposed variation.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	<i>Sydney Local Environmental Plan 2012 (Sydney LEP 2012)</i>
The site's zoning	E3 Productivity Support The objectives of this land use zone are: - To provide a range of facilities and services, light industries, warehouses and offices. - To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres. - To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity. - To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones. - To provide opportunities for new and emerging light industries. - To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site. - To encourage employment opportunities. - To promote land uses with active street frontages. (a) To promote for land uses that support the viability of adjoining industrial land uses.
Development standard sought to be varied	Clause 4.4 Floor space ratio The objectives of this clause are: (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future, (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic, (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure, (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality. The maximum base floor space ratio for the site is 2:1 (refer to Figure 4).  Figure 4 Floor Space Ratio Map – Sheet FSR_011 (site outlined in red)
Planning context	Pursuant to Clause 4.4 of the Sydney LEP 2012, the maximum base floor space ratio on the site is 2:1. Clause 6.14 of the Sydney LEP 2012 allows an additional 1.5:1 FSR for the provision of communal infrastructure, and therefore, the maximum permissible floor space ratio for the site is 1.5:1.

Matter	Comment
	Council is currently pursuing the Sydney Housekeeping amendments, which propose a range of updates to both the Sydney LEP 2012 and the Sydney Development Control Plan 2012 (Sydney DCP 2012). One of the proposed changes of relevance to this project is the introduction of an alternative design excellence process for social and affordable housing developments delivered by not-for-profit Tier 1 community housing provider, which essentially replaces the competitive design process with a design review process. The Sydney Housekeeping Amendments were endorsed for finalisation by Council and the Central Sydney Planning Committee (CSPC) in July 2025, however, are yet to be formally gazetted. It is noted that these changes were anticipated to be finalised in Q4 2025, and revised timing is unknown. In anticipation of these amendments, the project has undergone an extensive design review process with the Council's Design Advisory Panel (Panel), undertaken in lieu of a competitive design process. As one of the first projects to pursue this new alternative design excellence pathway, the design review process was conducted in accordance with the <i>Terms of Reference: Design Review Process – Social and Affordable Housing (Pilot) (January 2025)</i>, issued by Council. Following four meetings with the Panel, it has been confirmed that the proposal has the potential to achieve design excellence in accordance with Clause 6.21C of the Sydney LEP 2012, irrespective of a competitive design excellence process being undertaken. Clause 6.21D (3) permits a 10% floor space ratio bonus for buildings demonstrating design excellence. It specifically states the following: (3) A building demonstrating design excellence— (a) ... (b) <i>is eligible for an amount of additional floor space, to be determined by the consent authority, of up to 10% of—</i> (i) <i>the amount permitted as a result of the floor space ratio shown for the land on—</i> (A) <i>for a building for which development consent is granted under clause 6.60B—the <u>Alternative Floor Space Ratio Map—Employment Sites</u> or the <u>Alternative Floor Space Ratio Map—Affordable Housing Sites</u>, or</i> (B) <i>otherwise—the <u>Floor Space Ratio Map</u>, and</i> (ii) <i>any accommodation floor space or community infrastructure floor space for which the building is eligible under Division 1 or 2.</i> Clause 6.21A of the Sydney LEP 2012 defines building demonstrating design excellence as '<i>a building where the design of the building, or the design of an external alteration to the building, is the winner of a competitive design process and the consent authority is satisfied that the building or alteration exhibits design excellence.</i>' Therefore, on this basis, the 10% design excellence bonus is not strictly applicable under the current statutory framework. Notwithstanding, the proposed Sydney Housekeeping Amendments would extent eligibility for the 10% FSR bonus to developments achieving design excellence via the alternative design review pathway. In anticipation of these changes, the proposed development has been designed to incorporate the 10% FSR uplift, resulting in a maximum FSR of 3.85:1.
The proposed variation	The proposed development has a maximum floor space ratio of 3.81:1, which includes 564m² of the existing gross floor area (GFA) within the Mecca building, and 12,019m² of new GFA. Under the current legislation, the proposal presents the following variation: • 1.81:1 (90.5%) variation to the current 2:1 base FSR; or • 0.31:1 (8.9%) variation to the maximum permissible FSR of 3.5:1 (including the community infrastructure bonus). Despite this, it is emphasised that the proposed development would be fully compliant with the anticipated maximum permissible FSR of 3.85:1, which includes the 10% design excellence bonus under the forthcoming Sydney Housekeeping Amendments.

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP 2012 provides that:

- 3) *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 of the case, and*
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

These key considerations are considered in their respective sections below.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary

This Clause 4.6 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 height control pursuant to the 'First Method' outlined in Wehbe.

The discussion under the following subheadings demonstrates how the proposed height variation achieves the objectives of the FSR development standard notwithstanding the non-compliance.

Objective 4.4(1)(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future

The proposed variation facilitates a modest increase in floor space that directly supports the delivery of additional affordable housing within a highly accessible and strategically located site. The uplift enables a more efficient use of well-located land, ensuring that the development responds to current and projected housing demand, particularly for affordable housing. In doing so, the proposal satisfies the objective by delivering sufficient floor space to foreseeable development needs without resulting in any adverse environmental or urban design impacts.

Objective 4.4(1)(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic

The proposed development maintains an appropriate density and built form that is consistent with the emerging character of the Green Square precinct. The additional floor space does not result in excessive bulk or scale and has been carefully designed to integrate with surrounding developments.

Furthermore, the proposal comprises car parking significantly below the maximum allowable car parking rate, which will assist in reducing vehicle generation. This, together with the site's proximity to public transport and employment areas will minimise reliance on private vehicles. The proposal, through public domain improvements and the retention of the Mecca Coffee building, will enhance the pedestrian experience and amenity.

All in all, the variation does not generate unreasonable traffic impacts and remains consistent with the envisaged density of development, built form and land uses for the precinct.

Objective 4.4(1)(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure

The proposed increase in floor space results in a level of development that is appropriate given the site's location within a well-serviced and evolving urban renewal precinct. Green Square is identified as a key growth precinct with significant investment in infrastructure, including transport, public domain and community facilities. The development leverages this infrastructure capacity, and the minor variation to floor space is not anticipated to further strain existing or planned

services. Accordingly, the proposal achieves an appropriate balance between development intensity and infrastructure provision.

Objective 4.4(1)(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality

The proposed development has been subject to a rigorous design process, resulting in a high-quality architectural outcome that is consistent with the desired future character of the locality. The built form, massing, and articulation have been carefully considered to minimise visual bulk and protect amenity, including solar access, privacy, and streetscape quality. The additional floor space does not detract from these outcomes and is effectively a result of the design excellence process and therefore, has been integrated within the overall design. As such, the proposal reflects the evolving urban character of the area while maintaining a high level of amenity for surrounding properties and the public domain.

4.1.1 Assessment against the zoning objectives

The proposed development (inclusive of the proposed exceedance) is consistent with the objectives of the E3 Productivity Support land use zone, as presented in **Table 2**.

Table 2 The proposed development's alignment with the objectives of the E3 Productivity Support zone

Objective	Alignment
<i>To provide a range of facilities and services, light industries, warehouses and offices.</i>	The proposed development comprises affordable housing in line with Clause 7.13A of the Sydney LEP 2012, which permits residential accommodation for the purposes of affordable housing within an identified Business Area on the Locality and Site Identification Map, which the site is located on. As detailed within the SEE, it will also retain the existing roastery and coffee on the site within the existing Mecca building, as well as provide a commercial premise and community facility at the ground level of the new building to support an active and vibrant public domain.
<i>To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.</i>	The proposed land uses on site including, shop top housing, commercial, community facility and retail are compatible with each other, as well as the surrounding land uses of the local centre. It is acknowledged that there are a range of new approved and proposed developments, including a number of affordable housing projects in line with Clause 7.13A.
<i>To maintain the economic viability of local and commercial centres by limiting the certain retail and commercial activity.</i>	The proposed development involves the retention of the existing Mecca use on the site, which currently attracts a number of visitors throughout the week and weekends. Therefore, the retention of the café and roastery, along with the provision of a commercial premise and community facility, the proposed development will contribute to maintaining the economic viability of the Green Square growth centre.
<i>To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.</i>	In light of the current housing crisis, the provision of affordable housing on the site directly meets the needs of the community as evidenced by the number of applicants on City West Housings waitlist within the Sydney LGA and is consistent with the Council's policy position to allow affordable housing within the zone. The proposed development, including the small commercial premise and the community facility are suited to this location and satisfy the provisions of Clause 7.13A, specifically in that the development is compatible with the existing and approved uses of land in the vicinity of the development.
<i>To provide opportunities for new and emerging light industries.</i>	The retention of the existing Mecca roastery, a warehouse and form of light industry, supports this objective. The proposal safeguards the use, while providing a flexibly designed commercial space at the ground level that can accommodate a range of uses, consistent with the evolving character of the area.
<i>To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.</i>	The proposal supports this objective by retaining the Mecca coffee roastery, which manufactures goods on-site for retail sale, therefore, maintaining a land use that aligns with light industrial functions. In addition, the development also comprises a commercial tenancy and community facility that will meet the daily needs of workers and residents within the precinct and the surrounding area. These uses enhance the amenity of the area and contribute to a diverse and functional precinct.
<i>To encourage employment opportunities.</i>	The proposal retains and enhances existing employment generating uses (café and roastery), while introducing new commercial and community uses that will support

Objective	Alignment
	additional employment. The affordable housing component also supports the local workforce by enabling residents to live close to employment hubs and contributing to the local economy through increased resident expenditure.
<i>To promote land uses with active street frontages.</i>	The proposed development incorporates commercial and community uses at the ground level with direct street access and frontage, ensuring an active and engaging interface with the public domain. The continued operation of the Mecca café will also reinforce activation and pedestrian engagement. It is noted that the proposal also comprises an internal shared driveway that separates the new building from the existing Mecca building. In future, this driveway will be transferred into a pedestrian laneway, once the future road at the rear of the site is delivered by Council. This laneway, as well as the proposed public domain improvements will contribute towards the activation and enhancement of the street scape.
<i>To provide for land uses that support the viability of adjoining industrial land uses.</i>	The development retains the industrial activity of the coffee roasting facility within the existing Mecca building and introduces compatible land uses, including affordable housing, commercial premises, and a community facility. This mix of uses supports the viability of the surrounding industrial and employment land by providing services and amenities for workers and residents, without displacing or conflicting with existing industrial operations.

4.2 Clause 4.6(3)(b): Sufficient environmental planning grounds to justify the contravention of the development standard

Clause 4.6(3)(b) of the LEP requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action at [24]*). In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 Variation Request must be particular to the circumstances of the proposed development on that site at [60].

In this instance, the relevant aspect of the development is the proposed exceedance of the floor space ratio. There are sufficient environmental planning grounds to justify this contravention, as described below.

4.2.1 Imminent Changes to the LEP and the Design Excellence Process

Council is currently pursuing the Sydney Housekeeping Amendments, which propose a range of updates to both the Sydney LEP 2012 and the Sydney DCP 2012. One of the proposed changes of relevance to this Clause 4.6 is the introduction of an alternative design excellence process for social and affordable housing developments delivered by not-for-profit Tier 1 community housing provider, which essentially replaces the competitive design process with a design review process.

In making this change, the City proposes to amend Clause 6.21D of the Sydney LEP 2012 to permit the consent authority to award a bonus of up to 10% additional building height and up to 10% additional floor space to a building demonstrating design excellence when considering a development application resulting from a competitive process, or in the case of social and affordable housing by a CHP, resulting from the optional design review process.

As discussed in **Table 1**, the Sydney Housekeeping Amendments were endorsed by the CSPP and Council in July 2025, however, are yet to be formally gazetted. While not yet in force, the proposed development has been designed accordingly in anticipation of this amendment and therefore, seeks to utilise the 10% floor space, which would allow a maximum floor space ratio of 3.85:1.

As part of the process to achieve the 10% bonus for both floor space ratio and height of building, the proposed development has undergone a rigorous design excellence process to ensure the delivery of a high-quality built form that is responsive to its site context, surrounding developments, and the relevant planning controls. This process, undertaken in close collaboration with Council and the Design Advisory Panel (DAP), involved extensive consultation, design testing,

and analysis to create a proposal that is not only contextually appropriate but also aligns with the evolving character of the precinct.

Over the duration of the project, the applicant and design team engaged in four meetings with the DAP, resulting in a detailed Design Statement from them confirming that they consider the project demonstrates the potential to achieve design excellence in accordance with Clause 6.21 of the Sydney LEP 2012. The panel expressed general support and positive feedback for the proposal, particularly noting that the built form and massing are well-suited to the site and its surrounding urban context.

The design excellence process has also involved careful consideration of key urban design principles, such as the articulation of the building mass, the provision of a high level of residential amenity, and the integration of communal spaces that respond to the local context. Strategies to mitigate visual bulk, enhance the pedestrian experience, and optimise solar access have been incorporated into the design, reflecting a commitment to delivering a high standard of urban design.

This collaborative and iterative process has ensured that the proposal meets the objectives of design excellence, resulting in a development that is not only visually appealing but also functional and contextually sensitive. The general support from both the DAP and Council underscores the project's alignment with the broader urban vision for the area and achievement of design excellence, irrespective of the proposed variation to the floor space ratio standard.

4.2.2 Delivery of housing diversity and supply

The proposed development delivers a total of 161 dwellings, all of which are for the purposes of affordable housing. This represents a significant contribution to the support of affordable housing within the Sydney LGA and directly responds to the growing housing shortage and crisis affecting Greater Sydney, and Australia more broadly. By providing well-located and affordable housing, the proposal fosters the creation of a diverse, equitable and inclusive community, ensuring access to housing for vulnerable individuals and households.

The proposed floor space variation is necessary to facilitate the viable delivery of the project. The additional floor space allows an additional gross floor area of 1,157m². The typical residential floor has a total GFA of 819m², and therefore, the additional floor space not only facilitates the construction of two extra storeys but, more importantly enables the delivery of 24 additional affordable dwellings, which would house approximately 34-68 residents, who would otherwise be excluded under the current floor space standard.

Without this variation, the project's yield would be significantly reduced, undermining the intent of Clause 7.13A of the Sydney LEP 2012, which aims to enhance the supply of affordable housing within business areas, as well as broader strategic housing priorities, including:

- The National Housing Accord, which is a Federal Government commitment to deliver 1.2 million new homes across Australia over the next five years until July 2029 in collaboration with state and local governments;
- The NSW Government's Housing 2041 Strategy, which prioritises the acceleration of diverse and affordable housing supply; and
- Several other NSW Government initiatives to increase housing supply and affordability within strategically located areas that have great access to public transport, including the Transit Oriented Development (TOD) Program, the Housing Delivery Authority (HDA) pathway, and the Low to Mid Rise Housing Reforms.

Given the sites location within the Southern Enterprise Area of Green Square and its close proximity to public transport, employment, and key pieces of social and community infrastructure, it is entirely suitable for increased density and the delivery of affordable housing.

The minor breach of the floor space ratio standard aligns with the objectives of the zone and the desired character of the area. Not only does it support the revitalisation of the precinct and anchors it as a key precinct, but it also delivers high quality affordable housing, which is a major public benefit that far outweighs any potential impacts from the floor space variation, which as demonstrated throughout the accompanying documents is clearly minimal.

Further to the above, it is important to recognise that the financial viability of affordable housing projects is already marginal. The requested floor space variation is crucial to maintaining the feasibility of the development. Without it, the

project is at risk of becoming less viable, leaving the site underutilised and contributing no housing. Such an outcome would represent a missed opportunity to alleviate the ongoing housing crisis and the urgent need for affordable housing.

4.2.3 Environmental Impacts

The proposed floor space ratio exceedance will not generate any adverse environmental impacts such as overshadowing or visual impacts. The floor space variation is modest in scale and will be imperceptible from the public domain.

It is also important to note that under the proposed Sydney Housekeeping Amendments, anticipated to be gazetted in late 2025 while the proposal is under assessment, the 10% floor space bonus under Clause 6.21D will formally apply and therefore, the proposal will be 100% compliant with the maximum permissible floor space ratio.

Accordingly, the proposed variation will not result in a significant increase in overshadowing to adjacent residential properties or the public domain, nor will it result in any adverse visual impacts. The environmental impacts of the proposed exceedance are, therefore, negligible and have been mitigated through careful design and planning to ensure a high-quality urban design outcome.