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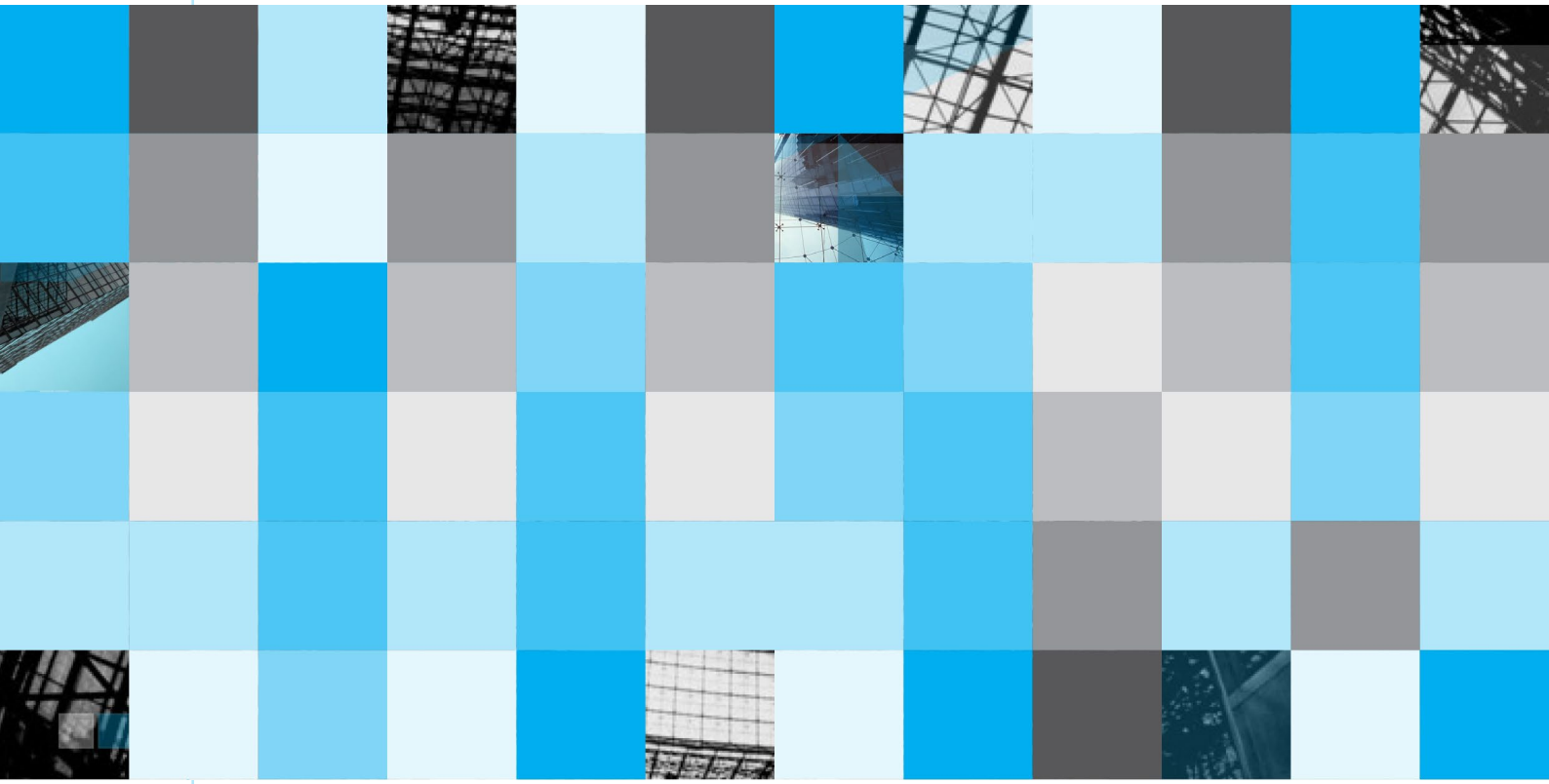

4 Delmar Parade and 812 Pittwater Road, Dee Why

# Clause 4.6 – FSR Development Standard

**SUTHERLAND & ASSOCIATES PLANNING**

ABN 14 118 321 793 ACN 144 979 564

# Clause 4.6 – FSR Development Standard

## 4 DELMAR PARADE AND 812 PITTWATER ROAD, DEE WHY

**December 2024**

Prepared under instructions from
Landmark Group

by

Aaron Sutherland
B Town Planning UNSW

aaron@sutherlandplanning.com.au
Tel: 0410 452 371
PO BOX 814 BOWRAL NSW 2576

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# 1.0 CLAUSE 4.6 REQUEST – FSR

## 1.1 Introduction

This request for an exception to a development standard is submitted in respect of the floor space ratio (FSR) development standard contained within Clause 16(1) of State Environmental Planning Policy (Housing) 2021 (SEPP Housing).

The request relates to State Significant Development Application No. 68230714 (SSDA) an application for the purposes of a mixed use development comprising three commercial tenancies and 280 apartments over 3 basements levels, lot consolidation and subdivision, and 15% affordable housing at 4 Delmar Parade and 812 Pittwater Road, Dee Why (the site).

As the Proposed Development satisfies the eligibility criteria at cl 16 of SEPP Housing, the development standard which the applicant is seeking to vary is cl 16(1) (and is not the standard FSR development control in the WLEP). This approach is consistent with *Pepper J's Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49 (AUF), which is detailed at Section 1.12 of this Clause 4.6 request.

## 1.2 Background

On 14 July 2023, the Sydney North Planning Panel granted consent to development application DA2022/0145 (Development Consent) which provided for demolition works and construction of a mixed-use development comprising a residential flat building and shop top housing, basement parking, lot consolidation and torrens title subdivision at the site (Approved Development).

The Approved Development included a variation to the FSR control.

There are two FSR zones which apply to the site under the WLEP, being 2.4:1 for the majority of the site and 3.2:1 for a small portion adjacent to Pittwater Road. The combination of the two FSR zones permits a total Gross Floor Area (GFA) of 19,488 square metres

The approved development had a total GFA of 19,417.5 square metres, which is less than the total combined permitted GFA under the WLEP, however, the distribution of the floor area was such that the approved development was slightly under the 2.4:1 FSR control in that part of the site, and conversely slightly above the 3.2:1 FSR control in the Pittwater Road part of the site. To be specific, the approved development involved an FSR of 4.27:1 in the 3.2:1 zone which was a variation of 33.2%. This is illustrated in the table below:

| FSR zone | Site Area | Compliant GFA | Proposed GFA/FSR | FSR | FSR Variation |
|---|---|---|---|---|---|
| 2.4:1 | 6,800 sqm | 16,320 sqm | 15,262.4 sqm | 2.24:1 | N/A |
| 3.2:1 | 990 sqm | 3,168 sqm | 4,222.1 sqm | 4.27:1 | 1,054.1 sqm or 33.2% |
| TOTAL | 7,790sqm | 19,488sqm | 19,484.6 sqm | N/A | N/A |

That application was accompanied by a Clause 4.6 request which justified the variation primarily on the basis that it was the result of redistribution of floor space on the site, which remained compliant overall, which was supported by the Sydney North Planning Panel.

The subject SSDA maintains the same approach as recently approved in the Development Consent, including an identical amount of commercial floor space.

Specifically, the Proposed Development seeks to increase the maximum FSR permitted on the Pittwater Road site of the development (pursuant to cl 16(1) of the Housing SEPP).

### 1.3 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the WLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the WLEP, or any other environmental planning instrument (including cl 16 of SEPP Housing).

However, clause 4.6(3) goes on to say that development consent must not be grant for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) of the WLEP the applicant of the SSDA requests that the FSR development standard at Clause 16(1) of SEPP Housing be varied.

This request has been prepared in accordance with the aims and objectives contained within cl 4.6 of the WLEP and the relevant Development Standard – cl 16(1) of the Housing SEPP.

### 1.4 Development Standard to be varied

As the Proposed Development satisfies the eligibility criteria at cl 16 of SEPP Housing, the development standard which the applicant is seeking to vary is cl 16(1) (and is not the standard FSR development control in the WLEP). This approach is consistent with *Pepper J's Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49 (AUF).

Clause 16(1) and (2) of SEPP Housing states:

> 16 Affordable housing requirements for additional floor space ratio
>
> (1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).
>
> (2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—
>
> $$\text{affordable housing component} = \frac{\text{additional floor space ratio (as a percentage)}}{2}$$

The Proposed Development provides 15% of the total floor space as affordable housing, and so Clause 16(1) of SEPP Housing provides for an increase of 30% to the two FSR zones which apply to the site being a 3.2:1 FSR along the Pittwater Road frontage of the site, and a 2.4:1 FSR for the remainder of the site, as illustrated in Figure 6 below.

This results in revised FSR controls of 3.12:1 and 4.16:1 respectively.

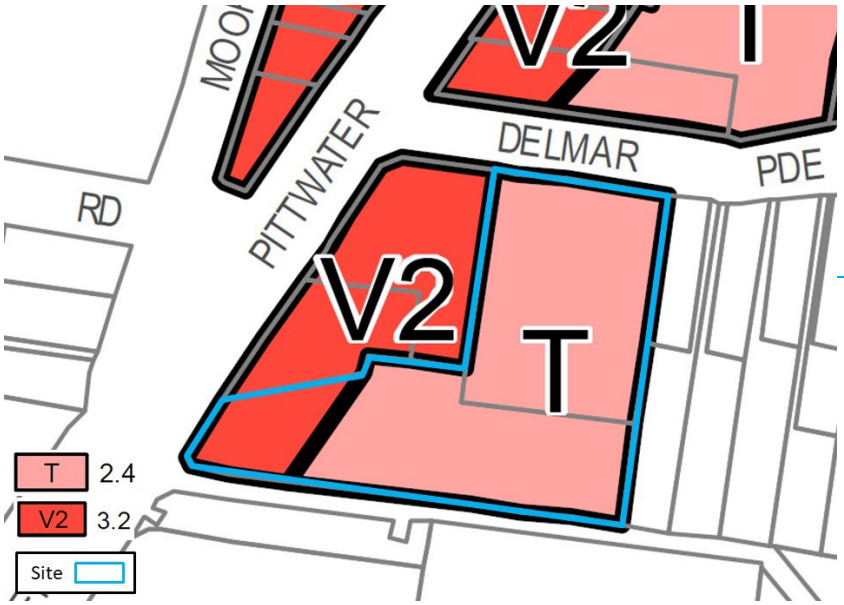


Figure 1:

Extract from the WLEP FSR Map

## 1.5 Extent of Variation to the Development Standard

In relation to the calculation of FSR for the two FSR zones, in *Mulpha Norwest Pty Ltd v The Hills Shire Council (No 2)* [2020] NSWLEC 74, the Land and Environment Court has decided that the FSR must be evaluated separately in the two different FSR areas.

The table below provides a breakdown of the site area of each FSR zone, the compliant Gross Floor Area (GFA) within each FSR zone, the total available Gross Floor Area on a combined basis, and the variation to the FSR control in the 3.2:1 zone.

| FSR zone | Site Area | Compliant GFA | Proposed GFA/FSR | FSR | FSR Variation |
|---|---|---|---|---|---|
| 3.12:1 | 6,800 sqm | 21,216 sqm | 19,337.7 sqm | 2.84:1 | N/A |
| 4.16:1 | 990 sqm | 4,118.4 sqm | 5,610 sqm | 5.66:1 | 1,491.6 sqm or 36.2% |
| TOTAL | 7,790sqm | 25,334.4sqm | 24,947.7 sqm | N/A | N/A |

Whilst the total proposed GFA is 386.7 square metres less than the total density that can be achieved across the entire site, the proposal exceeds the maximum GFA in the 4.16:1 area by 1,491.6 square metres or 36.2%.

It is noted that under the Development Consent DA2022/0145 there is a similar situation where there is a 33% variation to the FSR control in the Pittwater Road area of the site.

## 1.6 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in Wehbe v Pittwater Council [2007] NSWLEC

827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In addition, in the matter of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34] the Chief Justice held that "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary".

This request addresses the five part test described in Wehbe v Pittwater Council. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

1. **the objectives of the standard are achieved notwithstanding non-compliance with the standard;**

   There are no stated objectives associated with the control or Clause 16 in general. However, there is an objective for the entire Division at Clause 15A which is addressed below:

   > *The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.*

   The overall density across the site does not exceed the maximum density which is achievable with the application of the two FSR controls, and in fact is 610.7 square metres below the maximum floor area, and the variation arises as a result of a minor increase to the density on the western part of the site which is compensated by a reduction in density on the eastern part of the site.

   The proposed variation is important because it allows for the optimisation of the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households on site and within the environmental capacity of the 3.12:1 FSR zone, noting that the Pittwater Road building is compliant with the height control.

   Strict compliance in the 4.16:1 FSR zone would result in the reduction of 1,491.6 square metres of floor space, or approximately 15 apartments in total, of which approximately 3 apartments would be for affordable housing.

   Therefore the proposed minor variations to the FSR control are consistent with the objectives for Part 2, Division 1 of the Housing SEPP for infill affordable housing (which include the incivilities FSR control).

2. **the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

   The underlying objective and purpose of the FSR control is relevant to determine the appropriateness of the proposed variation.

   As such, whilst the Site is subject to a specified numerical control for FSR (cl 16(1)), the objectives and underlying purpose (at cl 15 of SEPP Housing) behind this development standards are equally important.

   The proposed development is consistent with the objective at cl 15A on the basis that the overall density on the site is as anticipated by the application of the two FSR zones and the variation to the FSR control in the 4.16:1 zone will facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

3. **the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

   The underlying objective and purpose of the standard relates to aims to incentivise and facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households. This objective would be thwarted by strict compliance because it would simply result in the loss of approximately 15 apartments in total, of which approximately 3 apartments would be for affordable housing.

4. **the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable**;

   The development standard has not been virtually abandoned.

5. **the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone**.

Key facts that support the above reasons why strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case are as follows:

- There has already been an approved 33% variation to the FSR control on the Pittwater Road area of the site, and the proposed development replicates the variation as a result of the incentivised uplift in density for the provision of 15% of the development as affordable housing.
- Whilst there is an exceedance in the 4.16:1 zone, this is more than balanced by a reduction in the 3.12:1 zone, and in fact the overall density is 386.7 square metres less than the maximum for the site when the two FSR zones are combined. Accordingly, the variation arises from the distribution of Gross Floor Area across the site and not as a result of any proposed increase in overall density for the site beyond that which is intended by the incentivised FSR controls.
- Notwithstanding that the distribution of Gross Floor Area across the site is not precisely as intended by the boundary between the two FSR zones, the proposed development nonetheless provides a distribution of mass and scale across the site generally as anticipated by the WLEP plus the incentivised FSR and height controls under SEPP Housing. In particular, the Pittwater Road building is fully compliant with the 31.2 metre height control.
- Despite the proposed FSR variation, the Applicant's proposed approach towards the distribution of density on the site is entirely aligned with the objective of the split FSR zones with a higher density and scale along the Pittwater Road frontage of the site and lower density and scale for the remaining majority of the site.
- The proposed variation to the 4.16:1 FSR control does not result in any unreasonable impacts, noting that the proposed development adopts all of the fundamental design parameters established for the site under development consent DA2022/0145.
- If the variation is not permitted, the overall site will not achieve its incentivised level of density and would simply result in the loss of approximately 15 apartments in total, of which approximately 3 apartments would be for affordable housing.

### 1.7 Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?

Clause 4.6(3)(b) of the WLEP 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.

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].

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development

The variation to the development standard in this instance is for FSR and unlike a variation to a height control for example, where there is a specific area of encroachment, there is not necessarily one specific area responsible for the FSR control.

The environmental planning grounds that justify the component of the development which results in the FSR variation are:

- The proposed development in the 4.16:1 zone where the variation is proposed is compliant in relation to height and consistent with the setbacks and massing established under development consent DA2022/0145. The removal of floor space to simply achieve numerical compliance in the 4.16:1 zone would simply result in a loss of approximately 15 apartments, or which 3 would be affordable housing, with no benefit.
- Strict compliance in the 4.16:1 FSR zone would force this area to be redeployed into Building A in the 3.12:1 zone, which could result in an anomalous outcome and significant height exceedance, as well as diminishing the ability to provide the most sensitive interface possible with the eastern adjacent site. The proposed development in the 4.16:1 FSR zone has a scale and proportions as anticipated by the planning controls such that the proposed variation does not result in any perceptible or detrimental impact or a built form outcome which differs from that which is expected on the site under SEPP Housing. Therefore, the appropriate contextual fit of the proposed development provides an environmental planning ground to support the proposed variation.
- It is noted that Preston J provides that the development is not required to demonstrate a beneficial effect relative to a compliant development, however, in this instance it is considered that strict compliance would not achieve any improved outcome for the development and would in fact result in a diminished outcome as a result of needing to redeploy the floor space into the 3.16:1 FSR zone, or simply result in less housing and in particular affordable housing than that which is capable of being provided within the demonstrated environmental capacity of the site.

- The overall density of the proposal does not exceed the total density which could be achieved across the site. Furthermore, the proposed distribution of density across the site, where more floor space is located in the western part of the site rather than the more sensitive eastern part, is entirely consistent with the core objective of the split FSR zones which instead aims to shift the majority of built form to the western part of the site and away from the sensitive interface to the east of the site. The Applicant's proposed approach towards the distribution of density on the site is entirely aligned with the objective of the split FSR zones by moving density towards the western part of the site.
- The proposed variation to the 4.16:1 FSR control does not result in any unreasonable impacts.
- If the variation is not permitted, the overall site will not achieve its planned level of density.
- The proposed FSR variation will provide for additional housing and in particular affordable housing which is an environmental benefit particularly in this location where Council is trying to encourage additional housing closer to centres due to the better access to public transport and the various facilities and amenities offered by the centres.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed FSR non-compliance in this instance.

### 1.8 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3). (*Rebel MH v North Sydney Council [2019] NSWCA 130*).

These matters include:

- demonstrating the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and
- demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

These matters are comprehensively addressed above in this written request.

### 1.9 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is 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 in which the development is proposed to be carried out.

#### Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail at Section 1.6 in this clause 4.6 request.

### Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the MU1 Mixed Use zone.

The objectives of the MU1 Mixed Use zone are:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To provide an active day and evening economy encouraging, where appropriate, weekend and night-time economy functions.

The Proposed Development is considered to be consistent with the zone objectives for the following reasons:

- The subject site is at the periphery of the centre and is largely disconnected from the commercial core of the centre. As a result, commercial floor space on the ground floor of the internal areas of the development is not commercially viable and only commercial tenancies with a street frontage will have a chance of succeeding in this location at the edge of the centre. The proposed has maximised the provision of commercial floor space with street frontage, and maintains approximately the same provision of commercial floor space as previously approved under Development Consent DA2022/0145.
- The proposal provides additional residential accommodation in an ideal location at the southern end of the Dee Why town centre and future residents will be able to walk and cycle to all of the services, employment and recreational facilities within the central area of the town centre, including Dee Why beach. The site is also very well located immediately to the north of the Stony Range Botanic Garden.
- The proposal successfully promotes active building fronts by providing active commercial edges to both the Delmar Parade and Pittwater Road frontages which will contribute positively to the life of streets and creating environments that are appropriate to human scale as well as being comfortable, interesting and safe.
- The proposal provides an appropriate mix of residential and commercial uses having regard to its location at the southern edge of the town centre.
- The proposal amalgamates several large sites at the southern end of the town centre and provides for an integrated underground car parking arrangement with a consolidated vehicular entry and exit point.

The above discussion demonstrates that the Proposal Development is in the public interest notwithstanding the proposed variation to the FSR development standard, because it is consistent with the in-fill affordable housing objectives in Chapter 2, Part 2, Division 1 of SEPP Housing and the objectives for development within the MU1 zone under the WLEP in which the development is proposed to be carried out.

Furthermore, there is no material public benefit in maintaining the standard generally or in relation to the site specifically as a variation as proposed has been demonstrated to be based on sufficient environmental planning grounds in this instance. Accordingly, there is no material impact or public benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard for this particular component.

### 1.10 Clause 4.6(5) Secretary Considerations

The matters for consideration under Clause 4.6(5) are addressed below:

> (5) In deciding whether to grant concurrence, the Secretary must consider:
>
> (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

> (5) In deciding whether to grant concurrence, the Secretary must consider:
>
> (b) the public benefit of maintaining the development standard,

This Clause 4.6 request has demonstrated there are environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard.

### 1.11 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are set out in subclause (1) as follows:

> (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.

As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 4.4 notwithstanding the proposed variation to the FSR development standard.

Requiring strict compliance with the FSR development standard in the 4.16:1 zone on the subject site would result in an inferior built form that would contextually be essentially no different from the proposed development and would not result in any meaningful benefit to the streetscape or the amenity of adjoining properties. Strict compliance would force this floor space to be redeployed to the 3.16:1 zone which is a less desirable outcome due to the objective to reduce density in that part of the site.

Allowing the flexible application of the FSR development standard in this instance is not only reasonable but also desirable given the objective to increase density in the western part of the site.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the 4.16:1 FSR standard, and where the overall site density is not exceeded, will achieve a better urban design outcome in this instance in accordance with objective 1(b).

### 1.12 Legal Interpretation

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where, as noted above, the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

In *Initial Action* Chief Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial test relative to a compliant development (at [87]);
- There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and
- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [945(c)]. That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

At [90] of Initial Action the Court held that:

> "In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

In the case of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 (later upheld on appeal by Chief Justice Preston), the Court emphasised that clause 4.6 is not subordinate to development standards such as height or FSR, and that the ability to vary a development standard is equally as valid as the development standards themselves. In this case, Acting Commissioner Clay relevantly said:

> "It should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome".

More recently in the case of *Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49 *(AUF)*, Pepper J considered whether the exceedance of both the height control in clause 4.3 of the Penrith LEP and the bonus height control under clause 7.11 of the LEP were properly dealt with under clause 4.6. In this case **the development application exceeded the standard height control at cl 4.3 of the LEP and the alternative (bonus) height control at cl 7.11** (which only eligible developments were able to benefit

from). In summary, Pepper J ultimately held at [103]-[106] that you cannot vary the underlying development standard, but must instead seek to vary the incentive (bonus) standard – which in *AUF* was cl 7.11 of the Penrith LEP. In other words, clause 7.11 in *AUF* was held to be a development standard in its own right, capable of being varied subject to a cl 4.6 request.

In compliance with Pepper J's decision in *AUF*, as the SSDA satisfies the eligibility criteria at cl 16 of the Housing SEPP, *this written requests seeks to vary the development standard at 16(1)*.

### 1.13 Conclusion

For the reasons set out in this request, it is considered that strict compliance with the FSR development standard contained within clause 16 of SEPP Housing is unreasonable and unnecessary in the circumstances of the case, and as such, there are sufficient environmental planning grounds to justify the variation.

It is requested that the consent authority exercise discretion and find that this request adequately addresses the matters required to be satisfied under subclause 4.6(3) of the as:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the Proposed Development.
- There is no public benefit in maintaining strict compliance with the standard.
- Finally, the proposed development and overall site density is in the public interest because it is consistent with the objectives of the standard and the zone, and facilitates the delivery of housing and in particular affordable housing.

In this regard it is reasonable and appropriate to vary the FSR development standard to the extent proposed.