

# GYDE

## Clause 4.6

# Variation Request

Floor Space Ratio (clause 4.4)

203-223 Leura Mall, Leura

submitted to Blue Mountains City Council  
on behalf of Pathways Residences

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**Report Version:** Final - Amended post lodgement

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## 1. EXECUTIVE SUMMARY

The proposal involves the restoration of 'The Ritz' estate, at 203-223 Leura Mall, Leura, to allow its use as a high-quality, fit for purpose residential care facility (RCF). The proposal includes retention and conservation of the main heritage building, 1914 wings, manager's residence and cottage and construction of new three-storey wings to the south and west of the original Ritz building including basement parking and extensive restoration of the estate's landscape setting.

The Ritz nursing home previously operated approximately 150 beds but was closed in 2017 due to noncompliance with aged care facility standards. The current proposal seeks to provide a replacement residential care facility that acknowledges the heritage significance of the site and is in accordance with today's standards. To meet the expectations and needs of consumers for privacy, dignity and amenity, dorm style accommodation is being converted to single rooms.

The site is within the 'Southern Tourist Precinct' of the Leura town centre and is zoned R1 – General Residential under the Blue Mountains Local Environmental Plan 2015 (BMLEP 2015). The proposed RCF and ancillary facilities are permissible with consent in the R1 zone.

The purpose of this Clause 4.6 variation request is to address a variation to Clause 4.4 'Floor Space Ratio' under the BMLEP 2015, which establishes a maximum floor space ratio (FSR) of 0.4:1 on the site.

The proposal has a gross floor area (GFA) of 7,512.6sq.m (i.e., an additional 2,992.6sq.m), which is equivalent to an FSR of 0.665:1. The proposed FSR therefore exceeds the 0.4:1 FSR standard by 66.25%.

*State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP) did not apply to the site at the time that this DA was originally lodged with Blue Mountains City Council on 10 September 2021. However, the Seniors SEPP has since been repealed and replaced by *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). The Housing SEPP applies to the site and includes a non-discretionary FSR development standard of 1:1. Compliance with this development prevents the consent authority from requiring the application of more onerous standards. The proposed development aligns with this acceptable state-wide standard for this type of seniors housing development.

The Aged Care Quality Standards further require a high level of privacy and dignity (Standard 1 – Consumer dignity and choice). As many residents have lost their partner, the demand for single rooms (with ensuite) rather than shared rooms is more prevalent. This means that the floor space is increased due to the additional number of bathrooms.

The proposal provides an appropriate built form that is in harmony with its surroundings and that responds to the existing scale and heights on the Ritz building. The additional GFA has been guided by existing heritage and landscape qualities, with the design and layout of the proposed additions being well controlled to ensure that these elements remain recessive and do not overwhelm the heritage building. No works are proposed to the northeast or north of the main Ritz building or immediately around the Manager's Residence. The proposed new extensions are also no higher than the eave heights of the Ritz building and are considerably lower than the ridge heights of The Ritz. The supporting Heritage Impact Statement concludes that the proposal is not of a scale that would impact on the setting or significance of heritage items in the area.

The surrounding residential character is of densely planted blocks where the houses are generally subservient to their setting. The existing landscape settings makes a significant contribution to the character of the area. The proposed development seeks to introduce an extensive landscape scheme which responds to the unique features of the site and ensures that the appearance of the new built form is in harmony with its surroundings. The expansive new landscaping will also enhance and preserve the grandeur and estate character of the site.

The increase in FSR above the standard does not detrimentally impact on the landscaping provisions, with the deep soil zones being equivalent to 41.5% of the site area and the landscaped area being equivalent to 50.44% of the site area.

The proposed new extensions will appear as 2-storey buildings when viewed from Leura Mall and the neighbouring properties to the south, which assists in retaining the existing relationship with surrounding 1 and 2 storey buildings. When viewed from the Leura Mall street frontage and from the neighbouring properties to the south, the buildings do not display excessive bulk because the lower ground floor is below the existing ground level and is therefore generally not visible.

Sightlines from the property to the south-east (225 Leura Mall) will also be significantly obscured by the existing mature trees, and additional trees that are proposed to be planted. While the existing trees along the common boundary with 24 Wascoe Street are recommended for removal, it is proposed that replacement trees with a mature height of 6m be provided within the generous 9.2m setback area.

Retention of the landscape buffer along the Wascoe Street frontage will assist in retaining the existing streetscape character and minimising the visibility of the proposed new west wing. The generous front street setbacks and extensive landscaping (retained and new) will ensure that the exceedance to the FSR standard does not have a detrimental impact on the neighbouring properties and that the privacy of adjoining residents is maintained.

Furthermore, the exceedance to the FSR standard does not result in any detrimental impacts on the adjoining or nearby properties in terms of view loss or overshadowing and do not detract from the amenity enjoyed by surrounding residents. The additional shadows cast by the development do not fall on any neighbouring internal living areas and will maintain a minimum of 3 hours of solar access to at least 50% of the neighbouring private open space areas in mid-winter.

The proposal provides an appropriate transition to the low density residential dwellings to the south. In lieu of proposing a building that provides a minimum 2m side setback to the south-west boundary and then steps up in height as it moves away from the boundary, the proposed development provides a generous 9.2m side setback to the wall at each level. Overall, the proposal provides a built form and massing which is compatible with the surrounding development.

As demonstrated by this report, the proposal also provides a built form that is compatible with the Leura Southern Tourist Precinct, which seeks to accommodate a diverse mix of dwellings and retail and other business-related services that service the local community as well as visitors. The proposed restoration of 'The Ritz' estate to allow its continued use as a high-quality, fit for purpose residential care facility is consistent with anticipated development within the Leura town centre.

This request demonstrates that there are no environmental impacts as a consequence of this contravention of the FSR standard and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the R1 – General Residential zone and is in the public interest. Strict adherence to the building height standard in this instance is therefore unreasonable and unnecessary.

## 2. INTRODUCTION

This written request has been prepared in accordance with clause 4.6 of the *Blue Mountains Local Environmental Plan 2015 (BMLEP 2015)* to justify a variation to the 'Floor space ratio' development standard proposed in a development application submitted to Blue Mountains City Council for the rejuvenation of a vacant and disused residential care facility (The Ritz) at 203-223 Leura Mall, Leura (site).

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23], *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]). These three matters are:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. 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 [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

It should be noted that in the recent decision of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court held at para 73 that “it should be noted cl 4.6 of [LEP] is as much a part of [LEP] 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.”

### 3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the 'Floor space ratio' development standard which is set out in clause 4.4(2) of the *Blue Mountains Local Environmental Plan 2015* (BMLEP) as follows:

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

On the 'Floor Space Ratio Map' the site is located in an area with a floor space ratio (FSR) designation of 'B'. The numerical value of the FSR development standard applicable in this instance is 0.4:1 (refer to Figure 1).

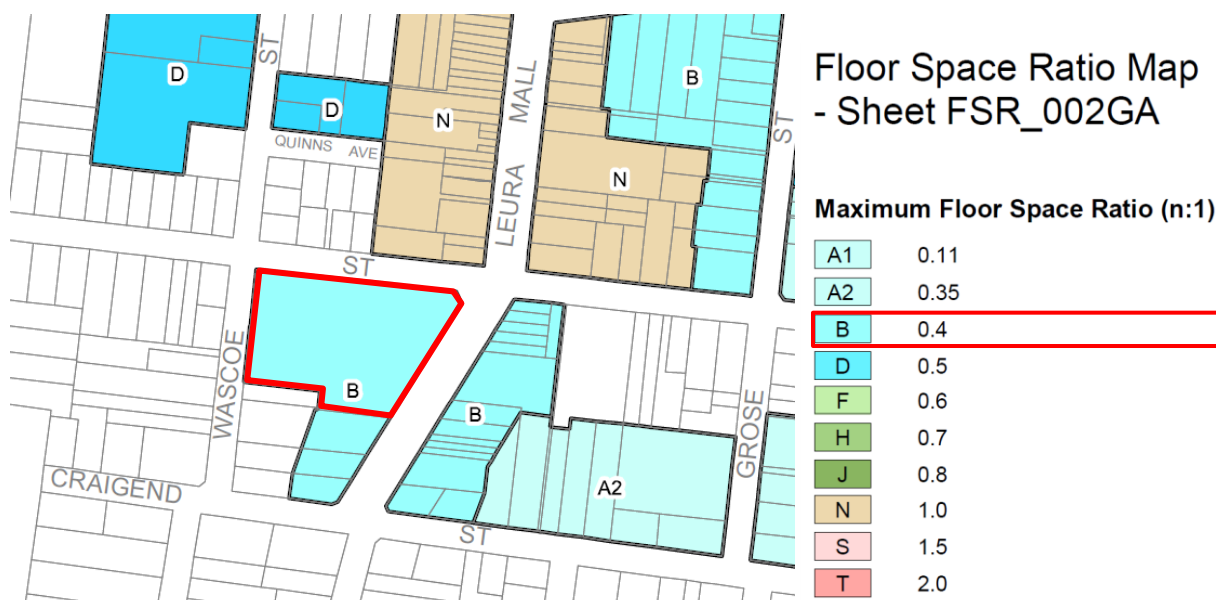


Figure 1: Extract of BMLEP 2015 Floor Space Ratio Map (Source: NSW Legislation)

The FSR development standard is not identified under sub-clause 4.6(8). The development standard to be varied is therefore not excluded from the operation of clause 4.6 of the LEP.



## 4. EXTENT OF VARIATION

### 4.1. Proposed FSR exceedance under the BMLEP 2015

The definition of FSR is established in Clause 4.5 "Calculation of floor space ratio and site area" of the BMLEP 2015.

#### *(2) Definition of "floor space ratio"*

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

In determining the site area of the proposed development for the purpose of applying FSR, the site area is defined under the BMLEP and means:

#### **Site area**

*the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan.*

In determining the gross floor area (GFA) of the proposed development for the purpose of applying FSR, the gross floor area (GFA) is defined under the BMLEP and means:

#### **Gross floor area**

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

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

The subject site area is 11,300sq.m meaning that the maximum permitted GFA is 4,520sq.m (i.e., FSR of 0.4:1). GFA calculation plans have been prepared by PBD Architects and are provided at Figure 2 to Figure 6. These plans

demonstrate that the proposal has a GFA of 7,512.6sq.m (i.e., an additional 2,992.6sq.m), which is equivalent to an FSR of 0.665:1. The proposed FSR therefore exceeds the 0.4:1 FSR standard by 66.25%.

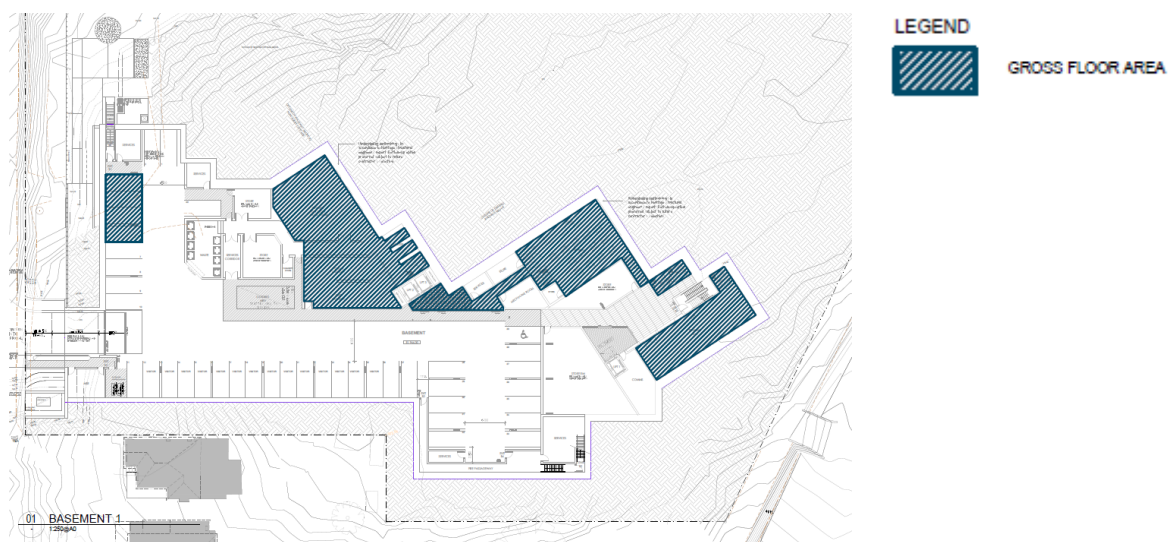


Figure 2: Extract of Basement Level GFA plan (DA500). Calculated GFA shown in blue (Source: PBD Architects)

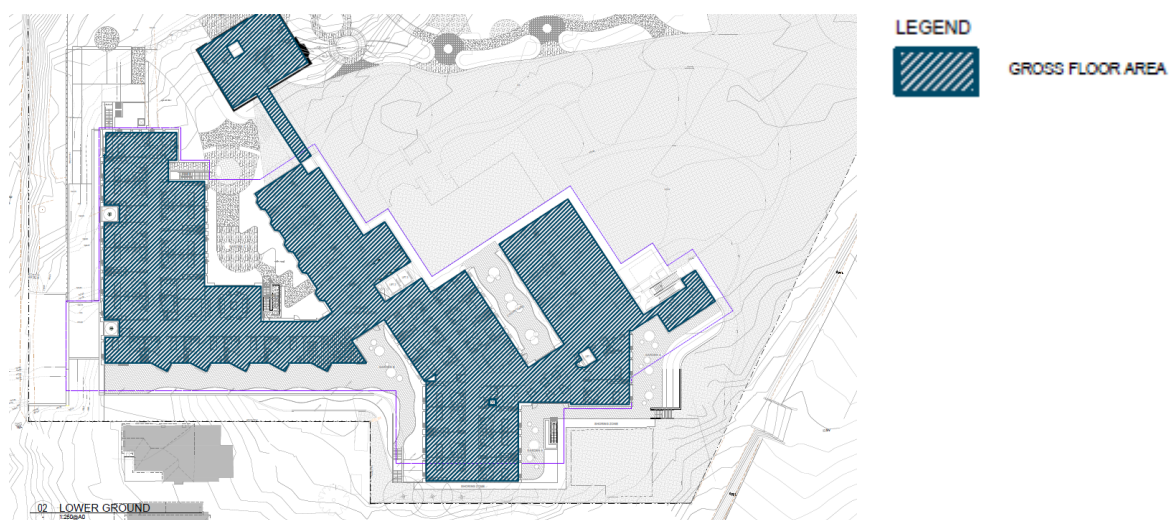


Figure 3: Extract of Lower Ground Level GFA plan (DA500). Calculated GFA shown in blue (Source: PBD Architects)

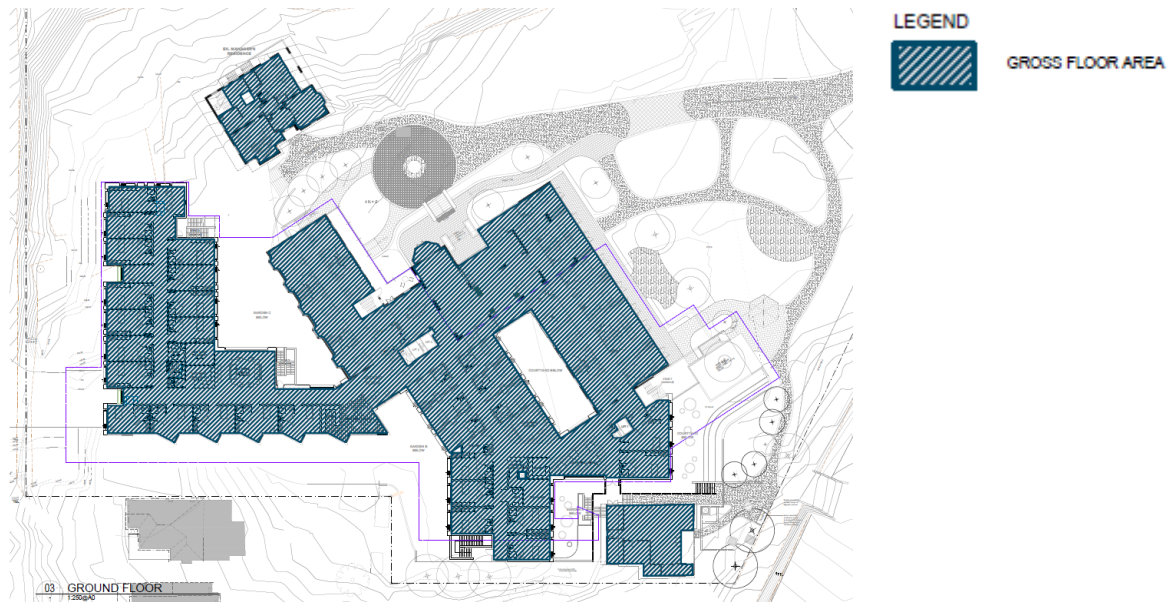


Figure 4: Extract of Ground Level GFA plan (DA500). Calculated GFA shown in blue (Source: PBD Architects)

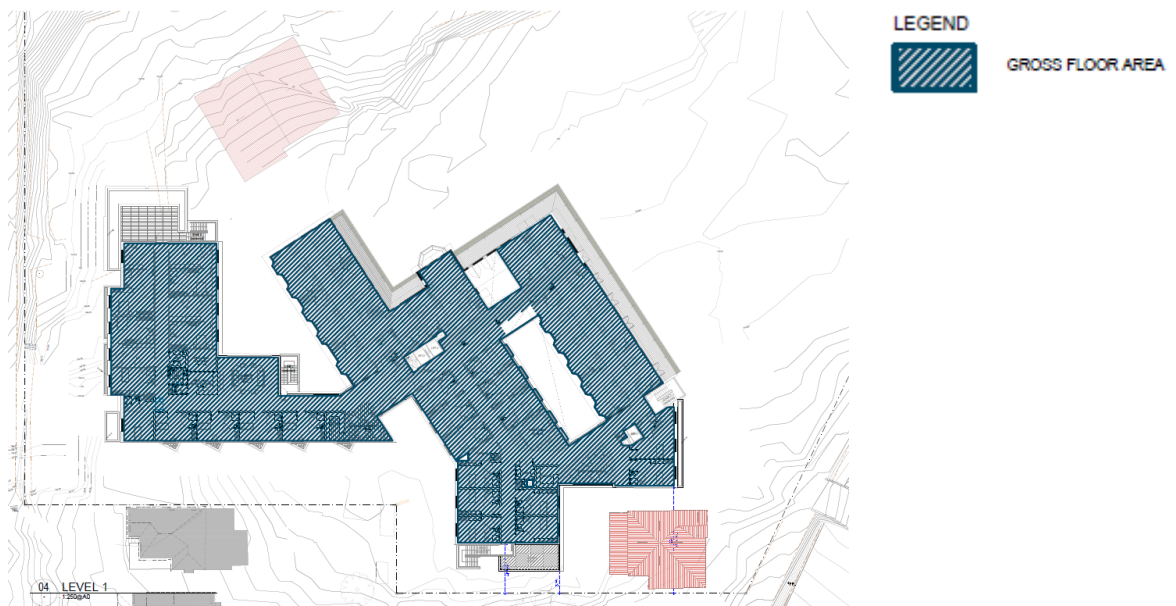


Figure 5: Extract of Level 1 GFA plan (DA500). Calculated GFA shown in blue (Source: PBD Architects)

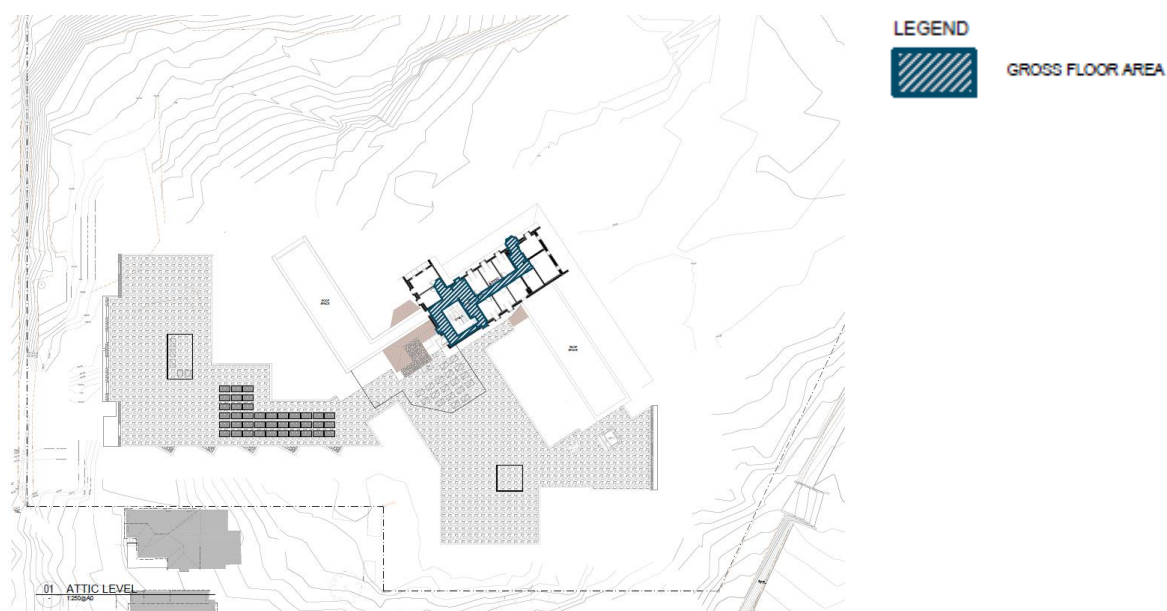


Figure 6: Extract of Attic GFA plan (DA501). Calculated GFA shown in blue (Source: PBD Architects)

The GFA used to calculate the proposed FSR is summarised in Table 1.

Table 1: Proposed GFA calculation under the LEP

Level	Proposed GFA	FSR
Basement 1	661.5sqm	
Lower Ground Level	2,252.1sqm	
Ground Level	2,563.9sqm	
Level 1	1,977.1sqm	
Attic	58.2sqm	
<b>Total Area</b>	<b>7,512.6sqm</b>	<b>0.665:1</b>

The proposed development involves the restoration and rejuvenation of a heritage listed site ('The Ritz') to re-establish its former use as a residential care facility. In addition to undertaking works to main heritage building, the proposed development seeks to demolish the unsympathetic outbuildings and extensions in the southern part of the site and construct new extensions to the building known as "new South Wing A", "new South Wing B", "new West Wing A" and "new West Wing B". The area of non-compliance cannot be attributed to any particular part of the new building works.



## 4.2. Comparative Standards

The 0.4:1 standard in the BMLEP 2015 is the relevant FSR standard for the DA. However, it is interesting to note the relevant non-discretionary height standard that specifically applies to RCF developments under the new Housing SEPP is 1:1.

The unique definition of GFA under the Housing SEPP is as follows:

### **Gross floor area**

*means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the **inner face** of the external enclosing walls, as measured at a height of 1.4m above each floor level—**(emphasis added)***

*(a) excluding columns, fin walls, sun control devices and elements, projections or works outside the general lines of the inner face of the external wall, and*

*(b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and*

*(c) excluding car parking needed to meet the requirements of this Part or the council of the local government area concerned and internal access to the parking, and*

*(d) excluding space for the loading and unloading of goods, and*

*(e) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling, and*

*(f) for a residential care facility—excluding floor space used for service activities provided by the facility below ground level.*

Figure 8 to Figure 12 demonstrate that when measured in accordance with the GFA definition under the Housing SEPP, the FSR is less than when measured in accordance with the LEP definition (i.e., 0.627:1 compared to 0.665:1). The key reason for the different calculation is that under the Housing SEPP, the service areas provided within the basement are excluded from the GFA calculation.

The Housing SEPP also includes non-discretionary standards that, if complied with, prevent the consent authority from requiring more onerous standards. Pursuant to Section 107(2)(c), the non-discretionary FSR is 1:1 or less. With an FSR of 0.665:1, the proposed development has a significantly less density and scale than would be permitted if determined under the Housing SEPP.



Figure 7: Extract of Basement Level GFA plan (DA512). Calculated GFA shown in orange (Source: PBD Architects)

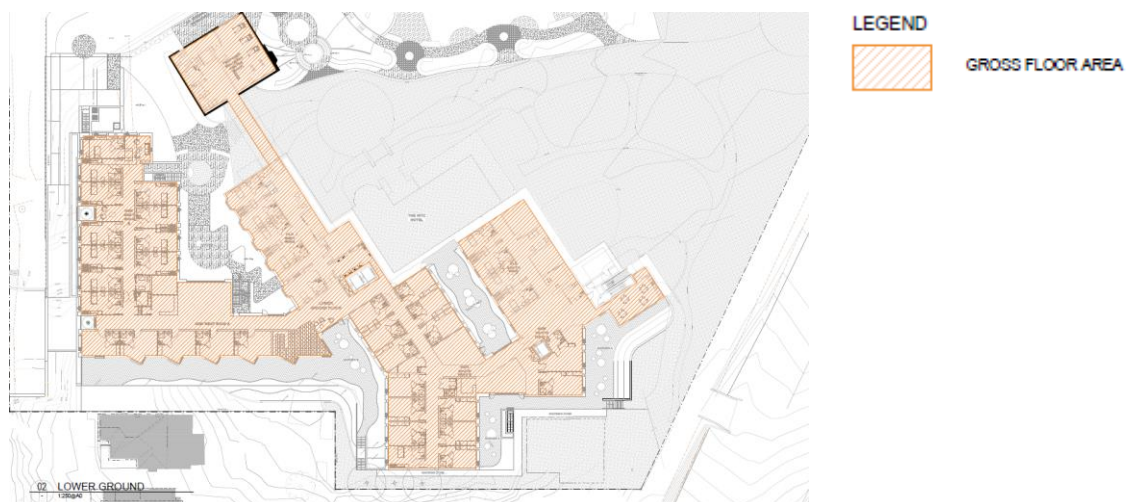


Figure 8: Extract of Lower Ground Level GFA plan (DA512). Calculated GFA shown in orange (Source: PBD Architects)

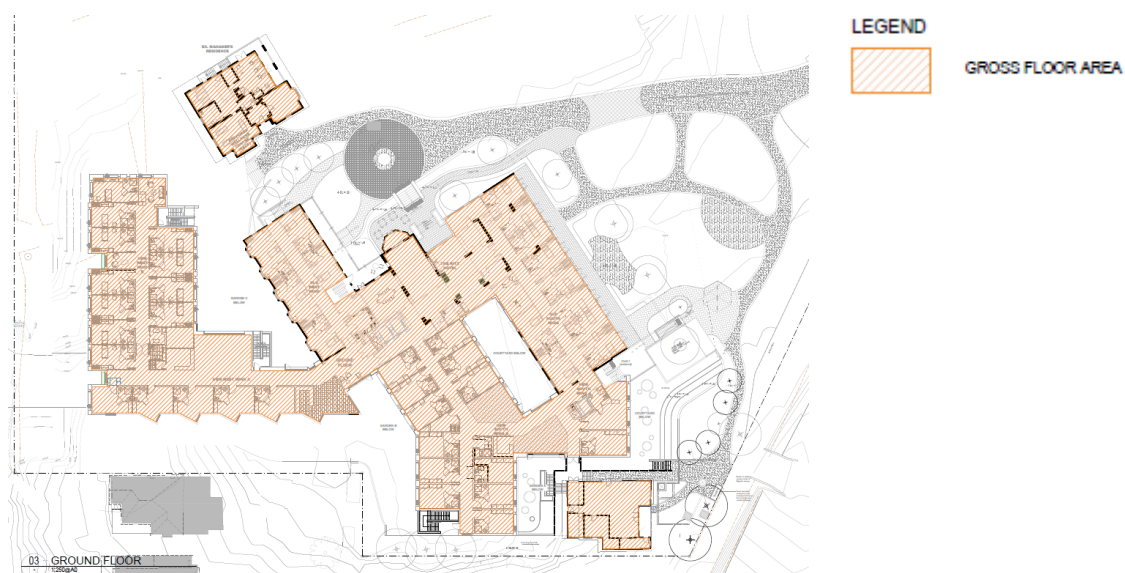


Figure 9: Extract of Ground Level GFA plan (DA512). Calculated GFA shown in orange (Source: PBD Architects)

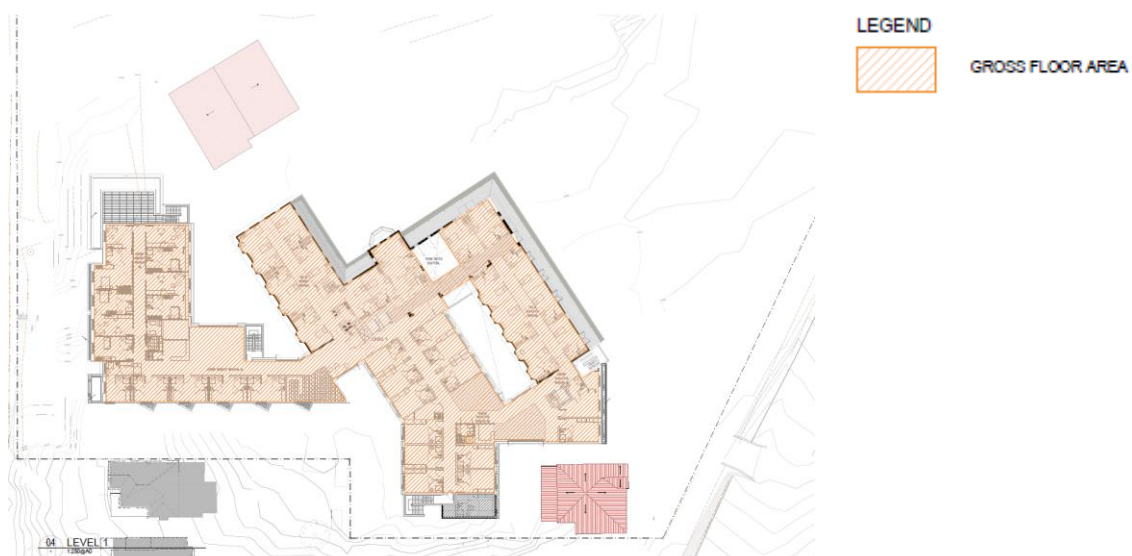


Figure 10: Extract of Level 1 GFA plan (DA512). Calculated GFA shown in orange (Source: PBD Architects)

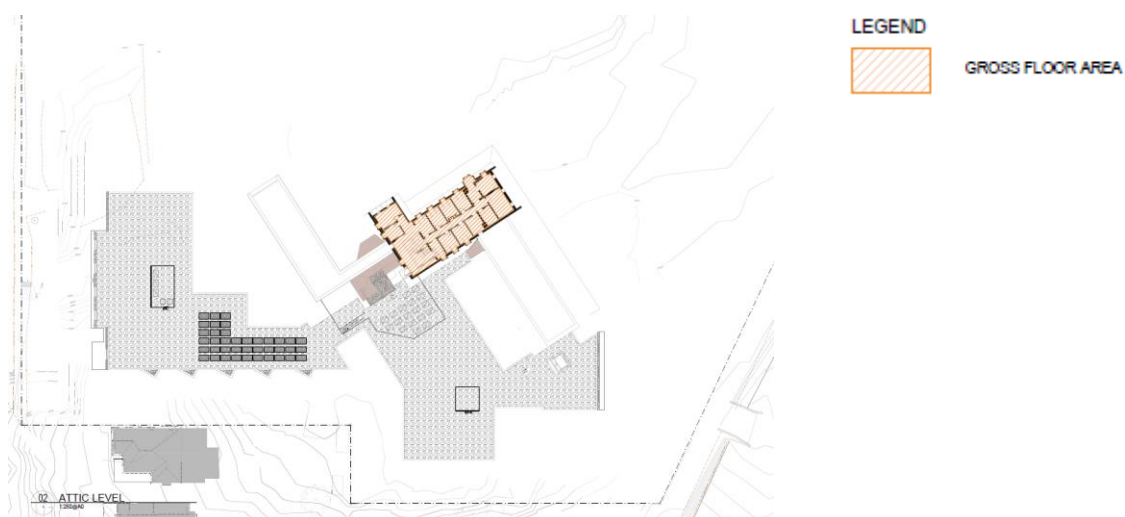


Figure 11: Extract of Attic Level GFA plan (DA513). Calculated GFA shown in orange (Source: PBD Architects)



## 5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five ways of establishing that compliance is unreasonable or unnecessary are:

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

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

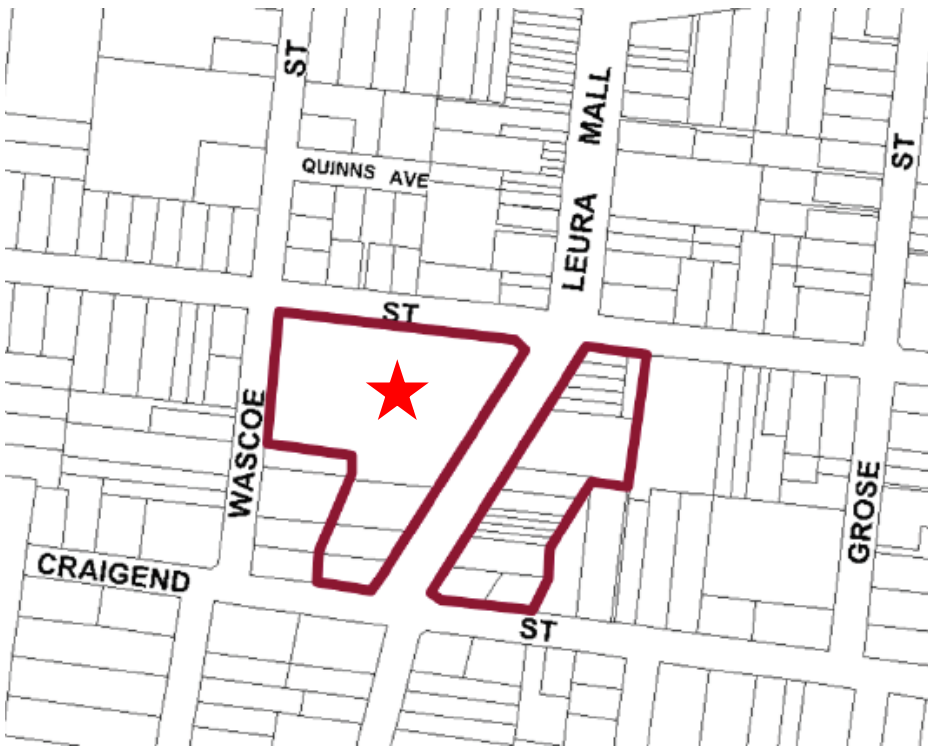
In this case, it is demonstrated below that Test 1 has been satisfied.

### 5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (Test 1 under *Wehbe*).

Table 2: Achievement of Objectives of Clause 4.4 Floor space ratio development standard of BMLEP 2015.

Objective	Discussion
(a) to ensure that development is compatible with the bulk, scale and character of existing and	<p><b>What is the bulk, scale and character of the existing surrounding development?</b></p> <p>Council's Development Control Plan (DCP) 2015 identifies 9 different precincts within Leura. The DCP describes the main commercial area of Leura (Precinct B2-LE01) as:</p> <p><i>"... a traditional shopping strip for Leura residents as well as the central focus for tourists to Leura. Presenting a village scale and character, the streetscape is dominated by the near continuous row of one- and two-storey shop fronts of early twentieth-century Federation, Edwardian and Inter-War buildings. The large central median island lined with cherry trees represents a safe haven for pedestrians with the</i></p>

Objective	Discussion
future surrounding development	<p><i>adjacent footpaths providing important areas of character and interest”.</i></p> <p>The subject site is located on the south-west edge of the core commercial area in the “Southern Tourist Precinct” (Precinct R1-LE03). This precinct serves as a transition between the main commercial area and the adjacent residential areas and is recognised as being distinct from the commercial and residential areas. The Southern Tourist Precinct includes part of the Leura South Local Heritage Conservation Area (LA106) and four (4) local heritage items, including the subject site. The boundaries of the Southern Tourist Precinct are shown in Figure 12.</p>  <p><i>Figure 12: Boundaries of the Southern Tourist Precinct. The subject site is marked with a red star. The Leura Mall commercial area is located to the north and north-east of the Southern Tourist Precinct (Source: Blue Mountains Council DCP)</i></p> <p>The Southern Tourist Precinct provides a mix of land uses including arts and craft galleries, refreshment rooms and tourist accommodation. The buildings are typically residential in scale and character and include established gardens.</p> <p>Leura is renowned for its spring and autumn displays of exotic plant species which attract many visitors each year. The mature trees, including colourful deciduous trees and distinctive European forest trees, and landscape settings make a significant contribution to the character of</p>


Objective	Discussion
	<p>the area.</p> <p>The existing 1-3 storey heritage buildings on the subject site are also a significant feature of the Southern Tourist Precinct. The significant vegetation around the perimeter of the site, however, screens significant portions of the site. This means that only limited views of the existing built form are currently available from the public domain (see Figure 13 to Figure 17).</p>  <p><i>Figure 13: View of site from Leura Mall (Source: Google Streetview)</i></p>





Figure 14: View of site from intersection of Leura Mall and Megalong Street (main entry) (Source: Google Streetview)

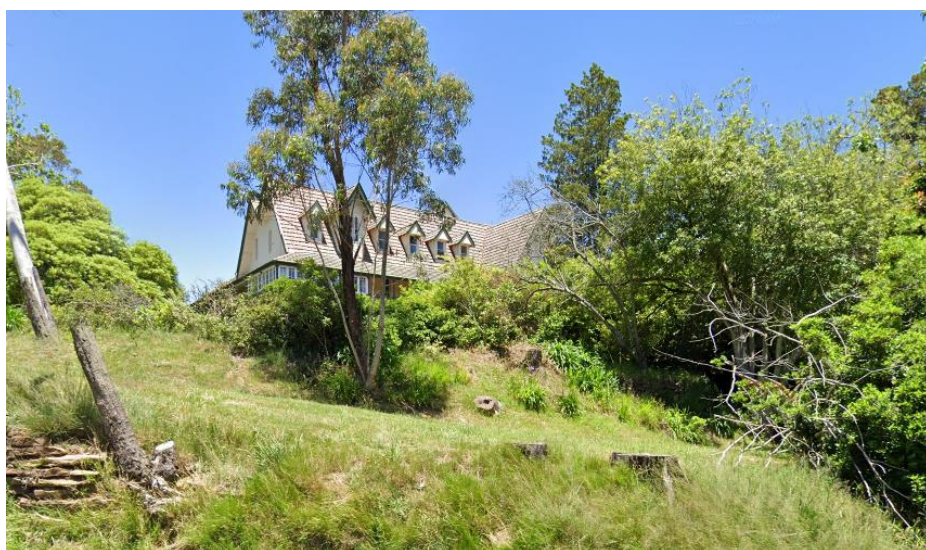


Figure 15: View of site and the main Ritz building from Megalong Street (Source: Google Streetview)



Figure 16: View of site and Manager's Cottage from Megalong Street (Source: Google Streetview)

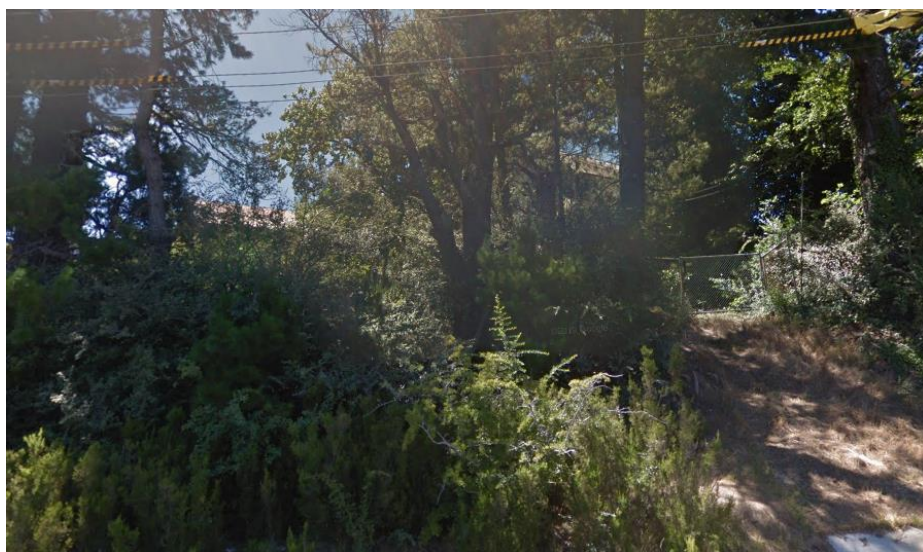


Figure 17: View of site from Wascoe Street (Source: Google Streetview)

The dwellings immediately to the north, south and west of the site, in Megalong and Wascoe Street, are single storey detached 'period' cottages. The dwellings to the north and west are separated from the site by a road reserve. Established street tree planting along the western side of Wascoe Street further separates the dwellings from the Southern Tourist Precinct (see Figure 18).

As shown on the plan at Figure 12, the detached cottages to the south-west and on the opposite side of Megalong and Wascoe Streets are located outside of the "Southern Tourist Precinct" area, recognising that these nearby low-density dwellings have a different character to that of the subject site and the rest of Leura Mall.





Figure 18: Established street tree planting along the western side of Wascoe Street (Source: Google Streetview)

The LEP responds to the site's context by providing a mix of zonings and floor space ratios. The mix of zones and FSR controls is intended to encourage a range of dwelling types adjacent to a local commercial centre, while also protecting and preserving items of local heritage significance and the established low density residential areas.

#### **What is the bulk, scale and character of the future surrounding development?**

In the recent case of *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161 the issue of "future character" is discussed at paras 42 to 44 and states:

*Desired future character is not determined by the development standards that control building envelopes for an area*

*42. The desired future character of any area cannot be determined by the applicable development standards for height and FSR alone.*

*43. The NSW planning regime includes various schemes to incentivise particular development by providing additional GFA above the otherwise prescribed development standards that determine a building envelope for a given site. See, for example (and unrelated to this appeal), the Part 6 Local provisions—height and floor space under the Sydney Local Environmental Plan 2012 which operates to incentivise certain development and to transfer development potential from a heritage building to another site. EPIs incentivise the provision of particular development and services as a means of achieving policy goals and these provisions can operate to increase GFA for particular development, subject to a range of requirements. Such provisions in State Environmental Planning Policies operate concurrently with local provisions (subject to s 3.28 of the EPA Act) that determine the building envelope for an individual site. SEPP ARH incentivises the provision by the private sector of in-fill affordable housing by providing*

Objective	Discussion
	<p><i>additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site, subject to a requirement that the proposed development is compatible with the character of the local area.</i></p> <p><i>44. The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (see Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [62]-[63]). For these reasons, the desired future character of an area is not defined and fixed by the development standards that determine the building envelope for a site. Development standards that determine building envelopes for a locality can only contribute to shaping the character of that locality (SJD DB2 at [53]-[54] and [59]-[60]).</i></p> <p>Based on the above, it is recognised that while the height and FSR development standards of the LEP can shape the future character of an area, so too can other external factors. The future character of an area can evolve over time, responding not only to the provisions of the LEP but also to existing buildings which are unlikely to ever be replaced or downsized, as well as the likely form of new buildings that do not yet exist.</p> <p>The Blue Mountains Character Statement, dated March 2020, states:</p> <p><i>The provision of housing choice and affordability through increased diversity of dwelling types is a community priority for select town centre areas. This will create affordability for younger residents and the ability for older residents to remain in their local area. Some buildings in town centres provide an opportunity for reuse and adaption for new purposes.</i></p> <p><i>Some towns and villages are likely to face some form of change, or are already experiencing changes that are altering their character.</i></p> <p>While the Leura village area is not expected to change significantly over time, the character of the area will evolve to some degree with new housing and commercial redevelopment. Suitable landscaped settings and use of appropriate materials and finishes are likely to be a key character</p>

Objective	Discussion
	<p>requirement for future change.</p> <p>The Blue Mountains Character Statement, dated March 2020, further states that in relation to the future character:</p> <div data-bbox="437 692 1453 1292" style="background-color: #f0f0f0; padding: 10px; margin: 10px 0;"> <p><i>Town Centre Precincts</i></p> <p><i>Leura has three town centre precincts that ensure new development retains the existing character and contextual cues. In Leura Mall, some increase in facilities is likely through re-use and development of upper floor areas.</i></p> <p><i>The town gateway precinct has the potential to be appropriately redeveloped to improve connectivity and display high quality urban design including sympathetic character and landscape outcomes.</i></p> <p><i>Small existing medium-density residential precincts create sympathetic infill with landscaped gardens.</i></p> <p><i>Residential Character areas</i></p> <p><i>Many residential parts of Leura have a significant character that includes highly appealing streetscapes and established garden settings. They are characterised by larger lots with a low site coverage and smaller dwelling sizes.</i></p> <p><i>The character of these areas is to be retained and enhanced, and the prominence of the landscape setting retained or re-established.</i></p> </div> <p>In relation to the Southern Tourist Precinct, this area is recognised as being part of the significant tourist hub while also having potential for limited medium-density housing around the village centre.</p> <p><b>Will the proposal be compatible with the bulk, scale and character of the existing and future surrounding development?</b></p> <p>Consideration of the compatibility of a proposal and its surroundings can be undertaken with regard to the Land and Environment Court Planning Principle on 'compatibility with context' in <i>Project Venture Developments v Pittwater Council [2005] NSWLEC 191</i>. To test whether a proposal is compatible with its context, the following two (2) questions can be asked:</p> <ul style="list-style-type: none"> <li>▪ Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.</li> <li>▪ Is the proposal's appearance in harmony with the buildings around it and the character of the street?</li> </ul> <p><b>Question 1</b></p> <p>In relation to the first question, the proposed development has no detrimental impacts on surrounding development in terms of view loss, overshadowing or privacy as demonstrated below:</p>



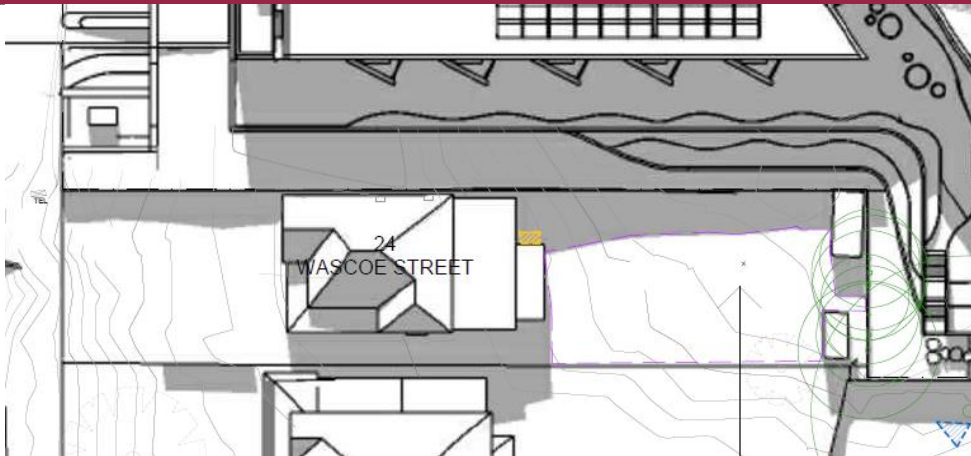
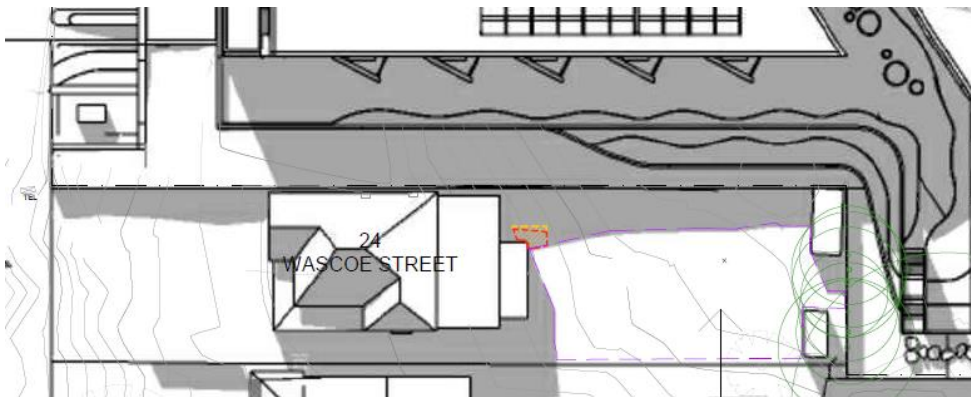
Objective	Discussion
	<p><u>View loss</u></p> <p>As seen in Figure 13 to Figure 17, dense perimeter tree and shrub planting currently limits the available views into the site from the adjoining streets or out of the site when standing at ground level. From the upper levels of The Ritz some district views are available as shown in Figure 19.</p>  <p><i>Figure 19: View from upper level of the main Ritz building looking north towards the Leura Mall commercial precinct (Source: GYDE)</i></p> <p>From the adjoining streets, views towards the site are generally of vegetation and sky, with only limited glimpses of the existing buildings. The existing landscaping, however, is generally overgrown and not well kept.</p> <p>The proposed development seeks to introduce an extensive landscape scheme which responds to the unique features of the site and enhances and improves the existing garden setting. The expansive landscaped grounds in front of the building will be retained and enhanced to preserve the grandeur and estate character of the site. This will provide surrounding development with improved views into the site. Filtered views to and from the Leura Mall will also provide a greater connection between the site and the commercial precinct.</p> <p>The entry experience into the site from the Leura Mall and Megalong Street driveway is currently very poor. The new landscape proposal will improve this for both the public street address and the entry into the site itself.</p> <p>The green treed edges of the site will be retained, and very little work will be undertaken to the significant embankments to the Megalong and Wascoe street frontages. This is to best maintain the stability and the visual character of these areas. The landscape buffer to Wascoe Street,</p>


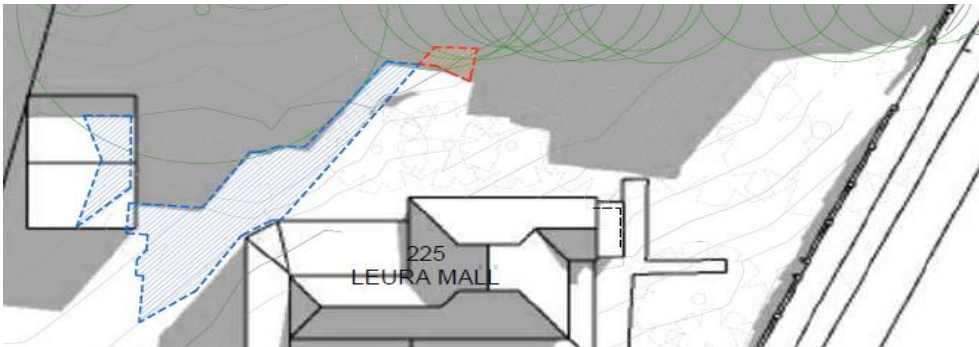
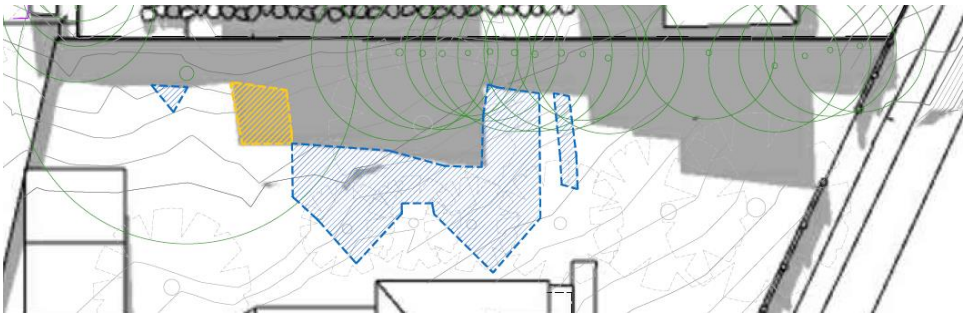
Objective	Discussion
	<p>Megalong Street and Leura Mall also helps to preserve the soft interface between the site and adjoining residential areas. Retention of the landscape buffer along the Wascoe Street escarpment, will further assist in retaining the existing streetscape character and minimising the visibility of the proposed new west wing.</p> <p>The retention and enhancement of existing views to the site from the public domain is demonstrated by the figures below, which compare photographs of the existing development to the photomontages of the proposed development.</p> <div data-bbox="427 770 1362 1021">  </div> <p><i>Figure 20: Existing and proposed view from roundabout (Source: Google Streetview and PBD Architects)</i></p> <div data-bbox="432 1090 1372 1352">  </div> <p><i>Figure 21: Existing and proposed view from Leura Mall (Source: Google Streetview and PBD Architects)</i></p> <div data-bbox="432 1422 1385 1686">  </div> <p><i>Figure 22: Existing and proposed view from Megalong Street looking south-west towards the Ritz Hotel (Source: Google Streetview and PBD Architects)</i></p> <p>In relation to views from the adjoining properties to the south (24 Wascoe St and 225 Leura Mall), this matter is addressed as part of the 'Privacy' discussion below.</p>

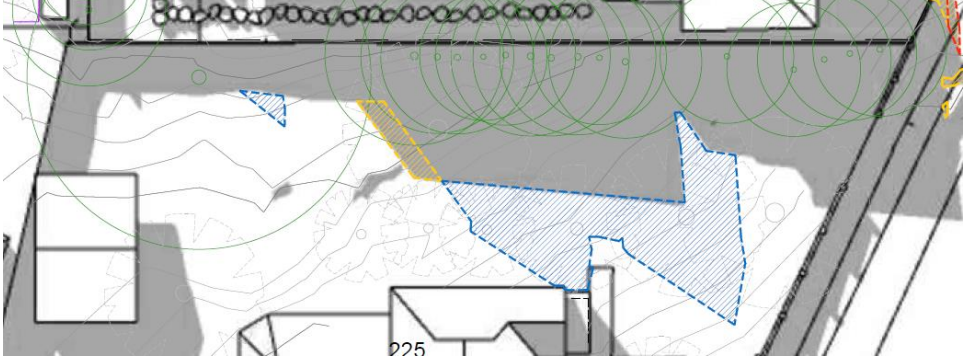
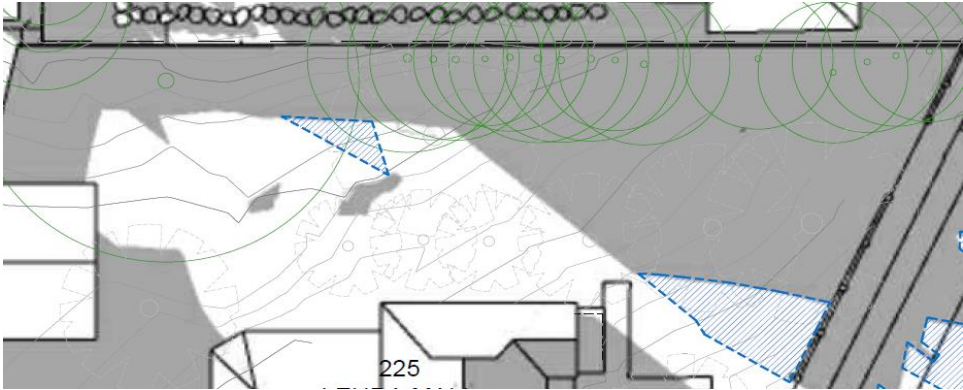
Objective	Discussion
	<p><u>Overshadowing</u></p> <p>PBD Architects have modelled the overshadowing impacts of the proposed development. The shadow diagrams confirm that the proposal, including the additional GFA, will not have a detrimental impact upon the available solar access to the neighbouring properties as follows:</p> <ul style="list-style-type: none"><li>▫ 24 Wascoe will maintain a minimum of 3 hours of solar access to at least 50% of their private open space areas in mid-winter between 11am and 2pm; and</li><li>▫ 225 Leura Mall will maintain a minimum of 4 hours of solar access to at least 50% of their private open space areas in mid-winter between 11am and 3pm.</li></ul> <p>The proposed development will also not obstruct sunlight to any neighbouring living room window. Extracts from the shadow diagrams are provided below.</p> <p>SHADOW DIAGRAM LEGEND:</p> <div><div>ADDITIONAL OVERSHADOWING BY PROPOSED RACF</div><div>IMPROVEMENT IN OVERSHADOWING BY PROPOSED RACF</div><div>ADDITIONAL OVERSHADOWING IMPACT BY PORTION OF PROPOSAL OVER 8M HEIGHT PLANE (8.5m SETBACK SCHEME)</div></div>


Figure 23: Extract from shadow diagram showing the shadow impact at 9am to 24 Wascoe Street (Source: PBD Architects)



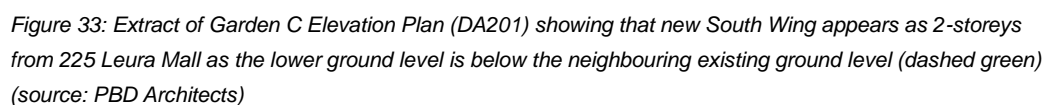
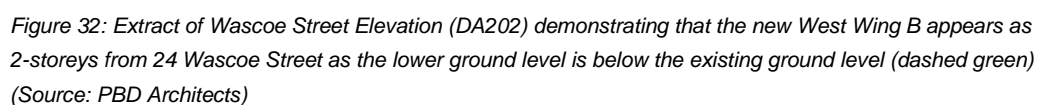
Objective	Discussion
	 <p>Figure 24: Extract from shadow diagram showing the shadow impact at 12noon to 24 Wascoe Street (Source: PBD Architects)</p>  <p>Figure 25: Extract from shadow diagram showing the shadow impact at 1pm to 24 Wascoe Street (Source: PBD Architects)</p>

Objective	Discussion
	 <p>Figure 26: Extract from shadow diagram showing the shadow impact at 3pm to 24 Wascoe Street (source: PBD Architects)</p>  <p>Figure 27: Extract from shadow diagram showing the shadow impact at 9am to 225 Leura Mall (Source: PBD Architects)</p>  <p>Figure 28: Extract from shadow diagram showing the shadow impact at 12noon to 225 Leura Mall (Source: PBD Architects)</p>

Objective	Discussion
	 <p data-bbox="424 931 1458 992"><i>Figure 29: Extract from shadow diagram showing the shadow impact at 2pm to 225 Leura Mall (Source: PBD Architects)</i></p>  <p data-bbox="424 1435 1458 1496"><i>Figure 30: Extract from shadow diagram showing the shadow impact at 3pm to 225 Leura Mall (Source: PBD Architects)</i></p> <p data-bbox="424 1563 517 1592"><b><u>Privacy</u></b></p> <p data-bbox="424 1606 1458 1666">The privacy of the neighbouring properties to the south (i.e., those which share a common boundary with the site) will be maintained for the following reasons:</p> <ul data-bbox="424 1680 1458 1897" style="list-style-type: none"> <li data-bbox="424 1680 1458 1897">▪ A minimum distance separation of more than 17.5 metres is provided between the dwelling house at No. 225 Leura Mall and the proposed development. Furthermore, significant, established vegetation exists and will be retained along the south-east boundary (see Figure 31), and additional tree planning is proposed. For these reasons, the proposed development will have no impact on the visual or acoustic privacy of the dwelling at No. 225 Leura Mall. The retained vegetation and additional tree planting along the south-east boundary will further ensure that views from the neighbouring property at 225 Leura Mall into the site are not altered.</li> </ul>

Objective	Discussion
	 <p data-bbox="427 1106 1426 1133"><i>Figure 31: Existing tree planting along the south-east boundary adjoining 225 Leura Mall (Source: GYDE)</i></p> <ul data-bbox="427 1160 1469 1818" style="list-style-type: none"> <li>▪ A comparison between the existing and proposed south wings shows that new south wing B will have no greater impact on No. 24 Wascoe Street than the existing development).</li> <li>▪ A generous setback of 9.2m is provided from the wall of new west wing A to the south-west boundary. The setback allows for new deep soil planting along this boundary (i.e. Japanese Maple trees with a mature height of 6m). The new boundary tree planting will further ensure that views from the neighbouring property at 24 Wascoe Street into the site are not detrimentally impacted.</li> <li>▪ The ground level windows provided to the new west wing A are provided at a 45-degree angle to prevent direct outlook to the neighbouring property. The provision of the new boundary landscaping will further ensure that there are no opportunities for overlooking from the ground level of the new west wing A to the neighbouring property at No. 24 Wascoe Street.</li> <li>▪ The upper floor level of new west wing A contains windows that are orientated towards No. 24 Wascoe Street. These windows are provided with a privacy screen which prevents any outlook from the window. As shown in <b>Error! Reference source not found.</b> the new boundary landscaping will also ensure that there will be no privacy impacts to the neighbouring dwelling at No. 24 Wascoe Street or its associated private open spaces.</li> <li>▪ New south wing B and new west wing A sit lower than the neighbouring properties and will have the appearance of a 2-storey building when viewed from the neighbouring properties. As a result, there will be no overlooking opportunities from the window openings provided at the lower ground levels of these buildings (see Figure 32 and Figure 33).</li> </ul>





For the reasons outlined above, the privacy of adjoining properties to the south will be maintained. The privacy of other surrounding properties, to the north, east and west will not be impacted given they do not share a common boundary with the site.

### Question 2

This question does not require the appearance of the development to be the same as the buildings around it or be the same as the existing character of the street, only that it be in harmony. The Blue Mountains Character Statement, dated March 2020, further recognises that some form of change is anticipated or is already occurring in villages such as Leura, which will result in some altering of their character.



Objective	Discussion
	<p>The disused Ritz Hotel buildings are recognised as a perfect opportunity for reuse and adaption, and introduction of much needed aged care accommodation. While the redevelopment of the site will result in new built forms that are not the same as the adjoining development, the new extensions will be in harmony with the area for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ The surrounding residential character is of densely planted blocks where the houses are generally subservient to their setting. The existing landscape settings makes a significant contribution to the character of the area. The proposal includes an extensive landscape scheme for the site which will enhance and improve the existing garden setting and reinstate the grandeur of the site. The retained and proposed landscaping is extensive and will ensure that the appearance of the new built form is in harmony with its surroundings.</li> <li>▪ The extensive landscaped grounds in front of the building have been maintained to preserve the 'Estate-like' character of the site. The positioning of the buildings ensures that there is a dominance of landscape over built-form.</li> <li>▪ Through a combination of generous front setbacks, including a minimum 7.15m setback to Leura Mall and a 11m setback to Wascoe Street, the retention of significant existing vegetation and the provision of extensive new landscaping, the new building work will not be highly visible from the public domain. The retained and new vegetation around the perimeter of the site will screen significant portions of the development to ensure that the new buildings are in harmony with the landscape character of the area.</li> <li>▪ The extensive landscaping will soften the edges of the new development, enhance the heritage buildings and provide visual layers which further reduce the visual bulk of the buildings.</li> <li>▪ The existing additions to the Ritz Hotel are outdated, disjointed and lack architectural merit. The proposed alterations and additions will provide a more cohesive and elegant form that relates more appropriately to the local context.</li> <li>▪ High quality and varied building materials have been incorporated in the facade to reduce the overall bulk and mass.</li> <li>▪ The proposed development has been designed to ensure that no new development is higher than the ridgeline of the Ritz building. This ensures that the new extensions are subservient to and in harmony with the existing Ritz Hotel building.</li> <li>▪ Council has previously granted development consent (X/662/2001) for alterations and additions to 'The Ritz', including a new 2-storey residential wing extending to the south of the Ritz main building. The roof ridge of the existing extension is RL 981.93. The previously approved building height is reflected in the current development with the proposed flat roof heights of the new south and west wings being between RL 980.15. The proposed heights of the buildings ensure that the scale of the development is consistent with the existing built form on the site.</li> <li>▪ New south wing B will replace the outdated and unsympathetic extension. New south wing B sits lower than the neighbouring properties and will have the appearance of a 2-storey building when viewed from the neighbouring properties (see Figure 33). Compared to the existing southern wing, new south wing B also provides a varied and stepped southern elevation, with greater setbacks than the existing building (see Figure 34). Significant trees along the south-east boundary of the site will also prevent views to the new south wings from the adjoining neighbour at 225 Leura Mall.</li> </ul>

Objective	Discussion
	<div data-bbox="427 568 1372 963"> </div> <p data-bbox="427 981 1465 1043"><i>Figure 34: Plans extracts comparing the existing south wing extension with the new south wing B extension in the same general location on site (Source: PBD Architects)</i></p> <ul data-bbox="427 1070 1465 1317" style="list-style-type: none"> <li>▪ When viewed from the Leura Mall street frontage and from the neighbouring properties, the development appears predominantly as 2-storeys. This is because the lower ground floor is below the existing ground level and is generally not visible when viewed from the east or south (see Figure 34 and Figure 35). Sightlines from the properties to the south are also significantly obscured by the existing mature trees. While the existing trees along the common boundary with 24 Wascoe Street are recommended for removal, the proposed landscape scheme for the site proposes that replacement trees (Japanese Maple) with a mature height of 6m be provided.</li> </ul> <div data-bbox="427 1328 1465 1659"> </div> <p data-bbox="427 1680 1465 1742"><i>Figure 35: Street View Plan (DA702) showing the view from Leura Mall to new South Wing A which appears as a 2-storey building (Source: PBD Architects)</i></p> <ul data-bbox="427 1765 1465 1989" style="list-style-type: none"> <li>▪ To reduce the perceived bulk of the west wing, a generous setback of 9.2m is provided from the wall of the building to the common boundary with 24 Wascoe Street. The generous 9.2m setback to the south-west boundary provides opportunities for new deep soil planting that will assist in screening the building. The lower ground level of west wing A also sits lower than the neighbouring property and will not be highly visible above the height of the boundary fencing.</li> <li>▪ The front elevation of new west wing B, fronting Wascoe Street, has been provided with two recessed sections to break up the length of the façade. The building has also been stepped to</li> </ul>

Objective	Discussion
	<p>provide a 2-storey element at its northern end. Modulation of the front façade to create three smaller volumes ensures that the bulk of the building is not excessive and provides a building form that is appropriate for the site and its context. These design elements ensures that the apparent bulk of west wing B, when viewed from a road, is minimised.</p> <ul style="list-style-type: none"> <li>▪ The west wing is setback a minimum of 11m from the Wascoe Street front property boundary to allow the existing vegetation to be retained and supplemented within the front setback area.</li> <li>▪ The new buildings have been sited to give due prominence to the existing heritage items on site (Manager's Residence, Education Cottage and former Ritz Hotel). This is achieved by locating the new development in the southern and western portions of the site and retaining the open landscape setting in the northern and eastern parts of the site. This also allows the existing heritage buildings to retain their relationship to the main commercial area of Leura to the north and north-east and for the existing significant vegetation to be retained in this part of the site, which is an important feature of the local area.</li> </ul> <p>Despite contravening the FSR standard, the proposal does not result in any incompatibility between existing or future developments in the surrounding area. The objectives of the standard are therefore achieved notwithstanding the non-compliance with the FSR standard. The proposed departure would also not prevent any future redevelopment of the adjoining sites.</p> <p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is considered to be consistent with the objective of the standard for the same reasons stated above.</p>
(b) to provide for a built form that is compatible with the role of the town and major centres.	<p><u>Role of the Leura town centre</u></p> <p>Leura is known for its exotic gardens and as a key tourist destination.</p> <p>The subject site is located to the south-west of the core commercial area of Leura in the "Southern Tourist Precinct" (Precinct R1-LE03). This precinct serves as a transition between the main commercial area and the adjacent residential areas.</p> <p>The various precincts within the Leura town centre have been identified for particular retail, commercial, or residential outcomes which are expressed in the objectives under Part 7 of the BMLEP 2015. The objectives for development Precinct R1-LE03 are as follows:</p> <p><i>(a) to promote the tourism role of Leura village,</i></p> <p><i>(b) to accommodate a diverse mix of dwellings and retail and other business-related services that service the local community as well as visitors,</i></p> <p><i>(c) to maintain and enhance the historically distinctive pattern of detached cottages that are surrounded by gardens and freestanding garages by conserving existing trees that provide visually significant streetscape features and ensuring that landscaping complements and extends the established pattern of tall canopy trees that are located primarily alongside property boundaries,</i></p>

Objective	Discussion
	<p>(d) to promote high levels of residential amenity for both future residents and existing neighbouring properties,</p> <p>(e) to promote new buildings that are consistent or compatible with the scale, bulk and architectural character of existing houses and cottages,</p> <p>(f) to encourage restoration of traditional architectural forms and details for existing early 20th century cottages and houses,</p> <p>(g) to provide on-site parking that does not dominate the street frontage and that is integrated with the design of surrounding garden areas.</p> <p>The proposal is consistent with the objectives of the Southern Tourist Precinct and therefore the role of the town centre, for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ As detailed within the accompanying Heritage Impact Statement (HIS), the former Ritz Hotel building is a landmark building that was an “...important catalyst in the commercial and tourist development of Leura and the adjacent scenic walks”. The proposed development seeks to retain and enhance the landmark qualities of the site by restoring it to its former glory. The proposed development also seeks to retain and enhance views to the site from the commercial area, allowing locals and visitors to enjoy the historical qualities of the site.</li> <li>▪ The proposed development will contribute to dwelling diversity by providing a residential care facility within a mix of historical and modern buildings, which will include a range of services to support the needs of its residents.</li> <li>▪ The proposed development seeks to maintain the garden quality of the area by providing significant landscaped areas throughout the site, particularly along its three street frontages, including the retention of the existing Monterey Pines where possible.</li> <li>▪ The proposed development provides a high level of amenity for its future residents by providing a range of on-site services and communal spaces (both internal and external). Additionally, the proposed development provides a high level of residential amenity for existing neighbouring properties in terms of views, overshadowing and privacy as discussed under objective (a) above.</li> <li>▪ As detailed within the accompanying HIS, the new buildings will be consistent with the scale and bulk of the existing heritage buildings on the site and are not of a scale that would impact on the setting or significance of heritage items in the area.</li> <li>▪ The proposed development involves the restoration of the former Ritz Hotel building on the site and its gardens.</li> <li>▪ The proposed development provides on-site car parking within the basement, where it will not dominate the site’s various street frontages. Significant terraced landscaping is provided around the basement access point to ensure that it integrates with the development’s design.</li> </ul> <p>The Blue Mountains Character Statement, dated March 2020, further recognises that the precinct will experience a gradual increase in the range of local services and facilities, and that potential exists for limited medium-density housing around the village centre.</p>

Objective	Discussion
	<p>The proposed built form is therefore expected to be compatible with the role of the Leura Tourist Precinct and will not be inconsistent with future development. The objectives of the standard are therefore achieved notwithstanding the non-compliance with the FSR standard.</p> <p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is considered to be consistent with the objective of the standard for the same reasons stated above.</p>

As demonstrated in Table 2 above, the objectives of the FSR development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the FSR development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

## 6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In this section it is demonstrated that there are sufficient environmental planning grounds to justify contravening the 'Floor space ratio' development standard as required by clause 4.6(3)(b) of the BMLEP.

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Furthermore, in *Initial Action* the Court clarified that there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As outlined in Sections 4, the variation relates to the exceedance of FSR. The environmental planning grounds to justify the departure of the 'Floor space ratio' standard are as follows:

- Strict compliance with the development standard would not result in a better outcome for development, as it would prevent refurbishment and adaptive use of the heritage building. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the *Environmental Planning and Assessment Act 1979*.
- The Ritz nursing home previously operated approximately 150 beds but was closed in 2017 due to non-compliance with required aged care facility codes. The current proposal seeks to redevelop the site, refurbish the heritage items and provide a replacement aged care facility that acknowledges the heritage significance of the site and is in accordance with today's standards. The success of the project relies on retaining the same number of beds. However, to meet the expectations and needs of consumers for privacy, dignity and amenity, single rooms are proposed. A reduction in GFA would result in considerably less rooms than previously provided on the site.
- The Blue Mountains Local Strategic Planning Statement (LSPS) and Local Housing Strategy (LHS) recognise that the Blue Mountains is experiencing and will continue to experience an aging of the population. In response, the Blue Mountains City Council has recognised that there is a shortfall of residential care facility places (especially in the upper Mountains area including Leura) and a need to broaden housing choice in the LGA. The development of the site for residential care will:
  - assist in achieving a portion of the identified shortfall;
  - provide appropriate infill development within an existing town centre; and



- provide significant benefits to the aging community.

The vast majority of housing in the Blue Mountains (92%) is free standing houses. Given that the Blue Mountains population is ageing and certain sections of the community are experiencing housing stress, the provision of a residential care facility will provide housing choice for ageing residents, allowing residents to age in place and remain within and connected to their community.

- Residents of residential care facilities (RCFs) are often incapable of many of the tasks associated with independent living and often frail, suffer mobility issues, and experience cognitive issues. These conditions make a level spacious layout essential for multiple wheelchairs and walkers to be able to manoeuvre around the RCF. This necessitates more floor space than the traditional RCFs.
- The Aged Care Quality Standards require privacy and dignity (Standard 1 – Consumer dignity and choice). As many residents have lost their partner the demand for single rooms (with ensuite) rather than shared rooms is more prevalent (though there are some shared rooms available). This means that the floor space is increased due to more bathrooms.
- The proposal facilitates the upgrading of the former residential care facility to contemporary standards and in doing so will significantly enhance the residential amenity and operational efficiency of the existing facility.
- The proposal provides a development that responds to the existing scale and heights on the site, with the proposed building works being no higher than the eave heights and being considerably lower than the ridge heights of the existing heritage building.
- The additional GFA has been guided by existing heritage and landscape qualities, with the design and layout of the proposed additions being well controlled to ensure that these elements remain recessive and do not overwhelm the heritage building. No works are proposed to the northeast or north of the main Ritz building or immediately around the Manager's Residence.
- A Heritage Impact Statement (HIS) has been prepared by John Oultram Heritage and Design. The HIS recognises:

*The aged development requires a critical mass of accommodation to be a feasible development and the provision of buildings to the south and west:*

- *Allows the retention of the heritage buildings on the site*
- *Allows the retention of the heritage gardens and features to the east and north*
- *Limits the footprint of the new buildings*
- *Allows setbacks between the new buildings and the built heritage components to limit their visual impact.*

The HIS recognises that while a cleared site would allow a lower scale development across the site, the proposal seeks to conserve the heritage components and gardens and provide adequate separation with new buildings to the south and west to compensate for the loss of built volume resulting from the heritage constraints.

- The proposal involves the retention and adaptive re-use of the existing heritage buildings. This is a condition of the site which cannot be reduced or changed for heritage reasons. Cumulatively, the heritage conditions, the design requirements for high-level residential care facility, and the required servicing arrangements result in the variations to the FSR.
- The proposal is consistent with the established built form on the site, appropriately responds to the constraints imposed by the heritage listing of the property and facilitates the provision of a quantum of floor space that reflects the reasonable development potential of the land, having regards to its former residential care facility use.
- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The proposal promotes the sustainable management of built and cultural heritage by maintaining the major heritage buildings on the site and proposing an appropriate adaptive reuse (1.3(f)).
- The development represents good design and amenity (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

The FSR exceedance does not impact on the amenity of adjoining neighbours and will not result in any detrimental privacy or overshadowing impacts for neighbouring properties.

There are no significant view lines or vistas from the public domain or from surrounding residential properties that are affected as a consequence of the additional GFA.

- The increase in FSR above the standard does not detrimentally impact on the landscaping provisions, with the deep soil zones being equivalent to 41.9% of the site area and the landscaped area being equivalent to 50.3% of the site area.
- The proposal provides an appropriate built form that is in harmony with the existing development on the site. The new extensions will also appear as 2-storey buildings when viewed from Leura Mall and the neighbouring properties to the south. Given boundary setbacks and extensive landscaping will further ensure that the exceedance to the FSR standard will not have a detrimental visual impact on the surrounding area.
- When considered against the Housing SEPP provisions, including the non-discretionary FSR standard of 1:1, it is demonstrated that the proposal align with acceptable state wide standards for this form of development.

For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b). We therefore consider contravening the FSR development standard to be justified.



## 7. PUBLIC INTEREST

In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives for development within the zone in which the development is proposed to be carried out. This is required by clause 4.6(4)(a)(ii) of the LEP.

In Section 5 of this report it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 3).

The table below considers whether the proposal is also consistent with the R1 - General Residential zone objectives.

*Table 3: Consistency with the R1 General Residential Zone Objectives.*

Objectives of Zone R1 - General Residential	Discussion
To provide for the housing needs of the community.	<p>The subject application seeks to rejuvenate a vacant and disused residential care facility in an area of high amenity.</p> <p>The closure of The Ritz Nursing Home in 2017 meant the loss of 150 beds to the upper Blue Mountains.</p> <p>The proposed alterations and additions to the existing heritage building will bring the quality of accommodation up to contemporary standards and in doing so will reinstate much needed housing and residential care for seniors and people with a disability.</p> <p>The proposal increases the availability and diversity of accommodation for older people and people with a disability and makes a significant contribution to the housing needs of the community. The proposal is therefore consistent with this objective.</p>
To provide for a variety of housing types and densities	<p>The proposal provides an additional housing type near an area which accommodates a large number of traditional detached housing typologies.</p> <p>The proposed development will contribute to the housing mix delivered by the Blue Mountains LGA and will provide much needed Seniors Housing in a highly accessible area.</p> <p>The proposal therefore achieves this objective.</p>
To enable other land uses that provide facilities or services to meet the day to day needs of	<p>The proposed development provides for the rejuvenation of a former residential care facility.</p>

Objectives of Zone R1 - General Residential	Discussion
residents.	<p>While the residential care facility does not provide for other land uses, it will include on-site services and amenities to cater for the day to day needs of the residents. On-site facilities will include:</p> <ul style="list-style-type: none"> <li>Wellness Centre – for beauty and hairdressing requirements including stocking basic beauty products such as make-up, skin cleansers and moisturisers, shampoos and conditioners.</li> <li>Café and shop – whilst residents will be fully catered for in terms of meals, the on-site café will provide an area where residents can have café items with their family/friends. The café will also stock items that would reasonably be required by the residents including day-to-day items such as confectionary and snacks, writing materials and postage stamps, books, magazines and newspapers (other than those provided). Other items could be ordered based on any specific requirements or on-going demand.</li> </ul> <p>The proposal therefore achieves this objective.</p>
To ensure that building form and design does not unreasonably detract from the amenity of adjacent residents or the existing quality of the environment due to its scale, height, bulk or operation.	<p>As demonstrated under Section 5 of this report, the proposed development will not unreasonably impact on the amenity, privacy or overshadowing of the adjacent residents. There are also no significant views lines from the adjacent residents that would be impacted by the proposal.</p> <p>Whilst the Ritz holds significant heritage value, the former conversion of the Hotel to a nursing home has led to numerous unsympathetic changes to the internal and external parts of the building. The gardens have also been left to grow untamed and the building is in significant need of repair.</p> <p>The proposed development will rejuvenate and restore the main Ritz building. The fragmented outbuildings and unsympathetic extensions will be removed, and new extensions will be added to provide a more cohesive and elegant form.</p> <p>A complementary and expansive landscape scheme which responds to the unique features of the site will further enhance and improve the quality of the environment.</p> <p>The proposal therefore achieves this objective.</p>
To enhance the traditional streetscape character and gardens that contribute to the attraction of the area for residents	<p>The proposed development will retain and enhance the landscape character of the site. As noted in the supporting Landscape Report, prepared by Svalbe &amp; Co + Brendan Moar, the proposed landscape design draws on the character and structure of the existing whilst</p>

Objectives of Zone R1 - General Residential	Discussion
and visitors.	<p>adapting to the spaces and uses generated by the new buildings.</p> <p>The landscape character to the north, east and westerly parts of the site remains very much in keeping with that of the existing. All paths and accessways, including the former main drive, however, are now proposed exclusively for pedestrian access and circulation.</p> <p>The proposed development will ensure that the landscaping on site is well kept and improve the existing streetscape character.</p>
To provide opportunities for the development of a variety of tourist-oriented land uses within a predominantly residential area.	<p>N/A</p> <p>The development is for the provision of a high-quality residential care facility for the use of private residents and their visitors.</p>

As demonstrated in Table 3, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

## 8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

In fact, support for the requested variation will lend support to matters of regional significance by virtue of the provision of much needed, high-quality, purpose built high care accommodation for seniors in the Blue Mountains community.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence of the Secretary required by Clause 4.6(4)(b).

## 9. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Blue Mountains Local Environmental Plan 2015*, to the FSR development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard (Test 1 under Wehbe) and is consistent with the objectives of the R1 - General Residential zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance
- The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the R1- General Residential Zone notwithstanding non-compliance with the FSR standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.