

Clause 4.6 – Exceptions to Development Standards

Request to Vary Section 87(2)(b)(i) of the State Environmental Planning Policy (Housing) 2021.

Address: 669-683 Old South Head Road, Vacluse

Proposal: The amended DA seeks consent to undertake the demolition of all structures on the site and construction of a seniors housing development involving 31 independent living units and ancillary facilities, including a ground floor retail/business premises, associated earthworks, lot consolidation, landscaping and tree removal works, located at No. 669-683 Old South Head Road, Vacluse ('the site').

Date: 23 July 2024

1. Introduction

This Statement has been prepared in accordance with the provisions of Clause 4.6 of the Waverly Local Environmental Plan 2012 (WLEP 2012). The statement sets out a request to vary the Additional Floor Space standard at Section 87(2)(b)(i) of the Housing SEPP.

2. Site and Proposed Development

2.1. Site Description

The site is located at No. 669-683 Old South Head Road, Vacluse and is comprised of nine (9) allotments that are legally described as the following:

- Lot A, DP 324744;
- Lot B, DP 324744;
- Lot 2, DP 10314;
- Lot 1, DP 169310;
- Lot 4, DP 192614;
- Lot 1, DP 168877;
- Lot 1, DP 167942;
- Lot 1, DP 666626; and
- Lot 2, DP 316716.

The site has an area of 4,345.03m² and is irregular in shape. The site is located on the north-eastern corner of Old South Head Road and Oceanview Avenue, with a splayed frontage to Old South Head Road of 105.17m in length. The site has a secondary frontage to Oceanview Avenue of 33.53m.

The site has a significant fall (of approximately 5m) from the from the south-east to the north-west towards Old South Head Road. The northern part of the site drains to the rear of the existing properties on the site from west to east.

Vehicle access to the site is currently achieved via multiple separate driveways located along Old South Head Road and Oceanview Avenue.

The development site has a split zoning in accordance with the provisions of the Waverley Local Environmental Plan 2012 (WLEP 2012), such that the southern end (being Lots A and B in DP 324744) is zoned E1 Local Centre and the remainder of the site (the northern portion) is zoned R3 Medium Density Residential.

2.2. Development Description

The amended DA seeks consent to undertake the demolition of all structures on the site and construction of a seniors housing development involving 31 independent living units and ancillary facilities, including a ground floor retail/business premises (on the E1 zoned land), associated earthworks, lot consolidation, landscaping and tree removal works, located at No. 669-683 Old South Head Road, Vaucluse ('the site').

3. Description of the Environmental Planning Instrument, development standard and proposed variation

3.1. What is the name of the environmental planning instrument that applies to the land?

The Waverley Local Environmental Plan 2012 (WLEP 2012) and the State Environmental Planning Policy (Housing) 2021 (the 'Housing SEPP').

3.2. What is the zoning of the land?

The site is partly located within both the R3 Medium Density Residential zone and the E1 Local Centre zone under WLEP 2012 as illustrated in the extract of the Land Zoning Map in Figure 1.

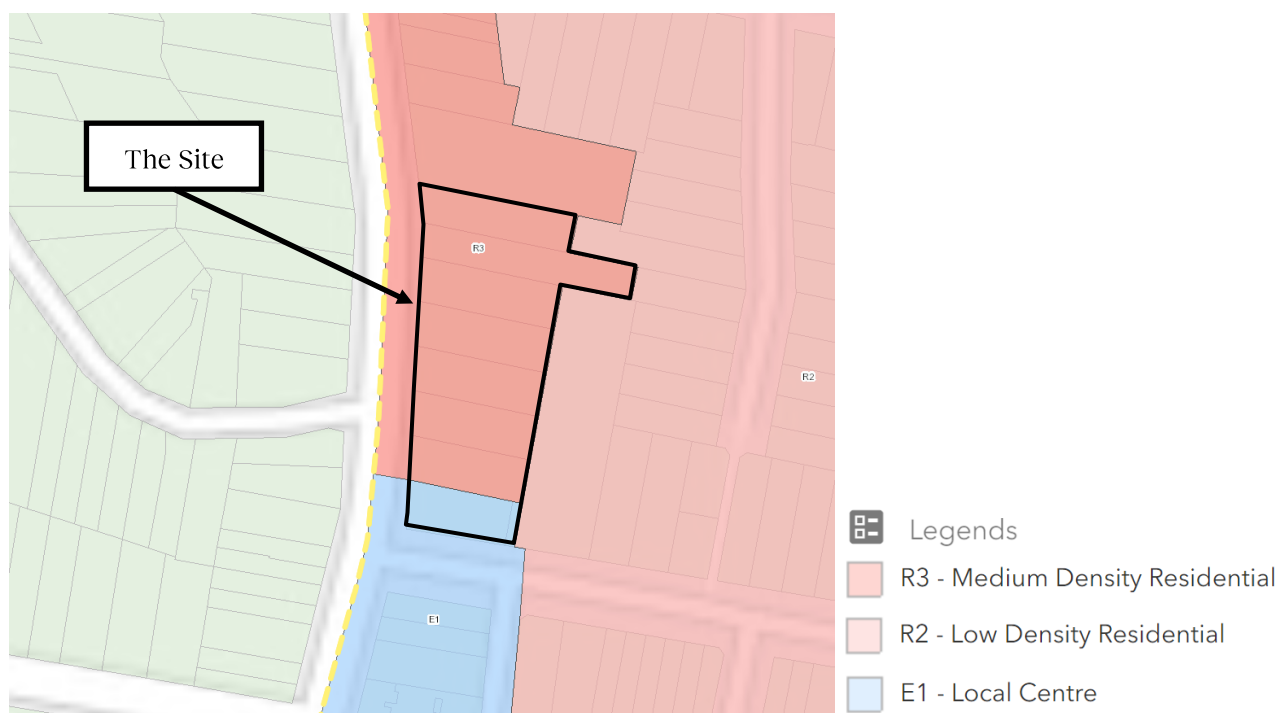


Figure 1: Extract of WLEP 2012 Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

The objectives of the R3 Medium Density zone are:

- To provide for the housing needs of the community within a medium density residential environment

- *To provide a variety of housing types within a medium density residential environment*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- *To maximise public transport patronage and encourage walking and cycling*
- *To increase or preserve residential dwelling density*
- *To encourage the supply of housing, including affordable housing, that meets the needs of the population, particularly housing for older people and people with disability*
- *To provide development that is compatible with the desired future character and amenity of the surrounding neighbourhood*
- *To promote development that incorporates planning and design measures that reduce the urban heat island effect*
- *To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping*

The objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings*
- *To strengthen the viability of Waverley's existing business centres as places of vitality for investment, employment and cultural activity*
- *To maximise public transport patronage and encourage walking and cycling*
- *To encourage the provision of affordable housing*
- *To provide for a range of other uses, including light industrial, that serve the surrounding neighbourhood without impacting on the amenity of the adjoining uses*
- *To ensure development is of a height and scale that achieves the desired future character of the neighbourhood*
- *To promote employment growth by giving preference to commercial development over residential development*
- *To provide active ground floor uses to create vibrant centres*

3.3. What is the development standard being varied?

The WLEP 2012 is the relevant EPI and Clause 4.4 of WLEP 2012 specifies a maximum floor space ratio (FSR) for development at the site.

The objectives of Clause 4.4 of WLEP 2012 are as follows—

- (a) *to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*

- (b) to provide an appropriate correlation between maximum building heights and density controls,
- (c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,
- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.

In addition to maximum floor space ratio outlined in Clause 4.4. of WLEP 2012, additional floor space is achievable at the site under the provisions of the “Additional Floor Space Ratios” development standard under Section 87(2)(b)(i) of the Housing SEPP which reads as follows:

“87 Additional floor space ratios

- (1) *This section applies to development for the purposes of seniors housing on land to which this Part applies if—*
 - (a) *development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or*
 - (b) *the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.*
- (2) *Development consent may be granted for development to which this section applies if—*
 - (a) *the site area of the development is at least 1,500m², and*
 - (b) *the development will result in a building with the maximum permissible floor space ratio plus—*
 - (i) *for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*
 - (ii) *for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or*
 - (iii) *for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and*
 - (c) *the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.”*

This section falls under Chapter 3 (Diverse Housing), Part 5 (Housing for seniors and people with a disability), Division 3 (Development Standards). There are no objectives stated under Section 87, however it is considered evident that the additional FSR provided under Section 87 is provided as an incentive to encourage development for the purposes of seniors housing in appropriate locations (zones) and within the circumstances set out under the ‘development standards’ section.

It is also noted that the Housing SEPP identifies the “Principles of the Policy” under Section 3 which are pertinent to development carried out under the provisions of the Housing SEPP (including the subject development). The ‘Principles’ are set out below:

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) *mitigating the loss of existing affordable rental housing.*

3.4. Type of development standard.

Clause 4.4 of the WLEP 2012 is a numerical development standard.

Section 87(2)(b)(i) of the Housing SEPP is a numerical development standard providing for additional FSR above that permitted under the WLEP 2012.

3.5. What is the numeric value of the development standard in the environmental planning instrument?

- Clause 4.4 WLEP 2012 FSR

Clause 4.4 establishes a maximum floor space ratio (FSR) of 0.9:1 and 1.5:1 to the northern and southern parts of the site, respectively, as illustrated in the extract of the WLEP 2012 Floor Space Ratio Map included in Figure 2.

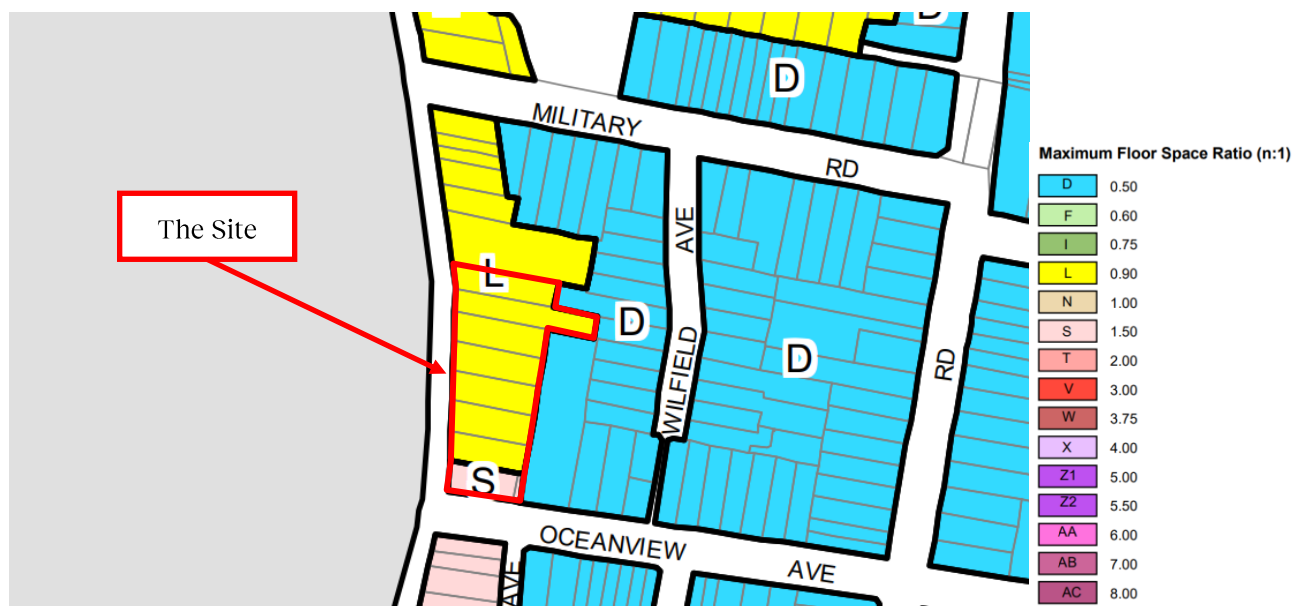


Figure 2: Extract of WLEP 2012 Floor Space Ratio Map

Noting a site area of 4,345.03m² (being 477.93m² in the E1 zoned land and 3,867.10m² in the R3 zoned land) the FSR of 1.5:1 over the E1 zoned land equates to a maximum of 716.94m² of gross floor area (GFA), while the FSR of 0.9:1 over the R3 zoned land equates to a maximum GFA of 3,480.39m² of GFA.

- Section 87(2)(b)(i) of the Housing SEPP Additional Floor Space Ratios Development Standard

In addition to maximum floor space ratio outlined in Clause 4.4. of WLEP 2012, additional floor space is achievable at the site under the provisions of the “Additional Floor Space Ratios” development standard under the Housing SEPP.

The site is zoned part R3 and part E1 and development for residential flat buildings is permissible within the R3 zoned land under the WLEP 2012 and development for the purpose of shop top housing is permissible with consent within the E1 zoned land under WLEP 2012. The provisions of Section 87 of the Housing SEPP are therefore applicable to the site.

The development site has an area of 4,345.03m² (being 477.93m² in the E1 zoned land and 3,867.10m² in the R3 zoned land) and the proposed additional floor space is for the purpose of independent living units.

‘Maximum permissible floor space ratio’ is defined in the *Dictionary to the Housing SEPP* as “*the maximum floor space ratio permitted on the land under an environmental planning instrument, other than this Policy, or a development control plan*”.

Therefore, the FSR permitted under clause 4.4 of WLEP 2012 with the additional floor space permitted under section 87(2)(b)(i) for the site is 1.725:1 over the southern (E1 zoned) part of the site and 1.035:1 over the northern (R3 zoned) part of the site.

The FSR of 1.725:1 over the E1 zoned land equates to a maximum of 824.43m² of GFA.

The FSR of 1.035:1 over the R3 zoned land equates to a maximum GFA of 4,002.45m² of GFA.

Applying these values across the entire site, the maximum GFA permitted is 4,826.88m², which in turn equates to a FSR of 1.11:1 pro-rated across the site (i.e. 4,826.88m² allowable GFA / 4,345.03m² site Area).

3.6. What is the proposed numeric value of the development standard in the development application?

The proposed GFA over the southern part of the site (zoned E1) is 912m² equating to a FSR of 1.91:1.

The proposed GFA over the northern part of the site (zoned R3), is 5309m² equating to a FSR of 1.37:1.

The proposed total GFA is 6221m², which equates to a FSR of 1.43:1 across the site.

3.7. What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed percentage of variations between the proposal and the FSR standards allowed in the environmental planning instruments (i.e. the combined FSR allowed under the WLEP 2012 and the bonus additional FSR permitted under S87(2)(b)(i) of the Housing SEPP) are set out below:

- The proposed GFA over the southern part of the site (zoned E1) is 912m², equating to a FSR of 1.91:1 and a variation of 87.57m² to the allowable 1.725:1 FSR which equates to a 10.6% variation.
- The proposed GFA over the northern part of the site (zoned R3), is 5309m², equating to a FSR of 1.37:1 and a variation of 1,306.55m² to the allowable 1.035:1 FSR, which equates to a 32.6% variation.

It is noted that in the circumstance that the FSR (being the FSR applicable under the WLEP 2012 plus the bonus additional FSR allowable under Housing SEPP) is applied wholistically across the site (i.e. the values of the FSR controls are applied pro rata over the entire site area), then:

- The total GFA of 6221m², which equates to a FSR of 1.43:1 and a variation of 1,394.12m² GFA or 28.9%.

It is noted that for abundance of caution a separate Clause 4.6 Statement requesting a variation to Clause 4.4 only has been prepared and submitted with the application.

4. Justification of the Proposed Variation

4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of WLEP 2012 establishes the framework for varying development standards in an Environmental Planning Instrument. Clause 4.6(3) outlines that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This written request has been prepared in accordance with the *Guide to Varying Development Standards*, published by the NSW Department of Planning and Environment in November 2023 and has regard to the following judgements:

- *Winten Property v North Sydney Council (2001) NSW LEC 46;*
- *Wehbe v Pittwater Council (2007) NSW LEC 827;*
- *Four2Five Pty Ltd v Ashfield Council (2015) NSW LEC 90;*
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSW LEC 118;*
- *Initial Action Ltd v Woollahra Municipal Council (2019) NSW LEC 1097;*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130;*

4.2. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The five common ways to establish whether compliance with the development standard is unreasonable or unnecessary have been summarised in *Wehbe v Pittwater Council [2007] NSWLEC 827* and are outlined as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. Objectives of the development standard are achieved notwithstanding the non-compliance
2. Underlying objective or purpose is not relevant to the development
3. Underlying objective or purpose would be defeated or thwarted if compliance was required
4. Development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard
5. Zoning of the land on which the development is proposed was unreasonable or inappropriate.

This written request relies on the first test described in *Wehbe*.

- *Clause 4.4 WLEP 2012 FSR Standard & Section 87(2)(b)(i) of the Housing SEPP*

Compliance with the FSR development standard at Clause 4.4 of WLEP 2012 and the bonus additional FSR standard at Section 87(2)(b)(i) or the Housing SEPP is unreasonable and unnecessary because it can be demonstrated that the development achieves the objectives of the Clause 4.4 of WLEP 2012 FSR standard as set out within the SEE submitted with the amended DA and highlighted below in this Statement under section 4.2.1.

It is noted that while the Housing SEPP does not provide objectives for the Additional FSR Standard at Section 87, it does provide 'Principles' at Section 3, and therefore for completeness the Principles of the Housing SEPP are also considered at Section 4.3 of this Statement.

4.2.1 Objectives of the FSR Standard

The proposal achieves the objectives of the FSR standard outlined in Clause 4.4 of WLEP 2012 despite the non-compliance, as demonstrated below:

- (a) to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*

This objective is not relevant to the proposal. The site is outside the Bondi Junction Centre and the proposed development will have no impact on the delivery or otherwise of floor space within the Bondi Junction Centre.

- (b) to provide an appropriate correlation between maximum building heights and density controls,*

The proposed development is generally consistent with the maximum building height development standard albeit that there is a minor non-compliance with that standard for the purpose of lift overruns and a small component of the northern end of the building. This is addressed in a separate Clause 4.6 Statement.

The minor non-compliance with the building height standard is a result of the significant fall in the topography across the site and particularly at the northern end. Additionally, the proposed building envelope and building scale is consistent with the envelope and scale of development approved at the site under the two recent approvals (i.e. DA-455/2021 for No. 671-683 Old South Head Road, Vaucluse and DA-374/2020 for No. 669 Old South Head Road, Vaucluse).

Further, the proposed building height is well under the building height that would otherwise be applicable under the provisions of s87(2)(c) of the Housing SEPP that allows for development to result in a building with a height of not more than 3.8m above the maximum permissible building height (being the height allowed under the WLEP 2012).

The fact that the proposed FSR effectively 'fits' within the applicable building height (apart from very minor elements) demonstrates that there is an appropriate correlation between the proposed FSR and the applicable WLEP building heights for the site.

Further, if the FSR were reduced to match the FSR under s87(2), then the building height would be significantly below both the WLEP height and the bonus height. This would not be an 'appropriate correlation' and would not meet the objective.

- (c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*

The site is located at the northern end of the Rose Bay North Centre as identified in the WDCP 2022. The E1 zoned land sits within the Centre and the R3 zoned land sits immediately adjacent to the Centre. The Desired Future Character Objectives for the Centre are as follows:

- (a) To ensure an integrated approach and consistent treatment to the conservation of buildings of historic character.*
- (b) To maintain and improve the continuity of awnings over the footpath.*
- (c) To maintain Old South Head Road as the primary streetscape in the village with side streets as secondary frontages.*
- (d) Maintain a good distinction between the mixed use sections of Old South Head Rd and residential side streets.*
- (e) To maintain a clean and attractive environment, with waste disposal managed discreetly and efficiently.*
- (f) To ensure that the centre provides universal access to all users.*

- (g) To promote well-maintained mid-rise buildings of varying styles which form a consistent street frontage of ground floor shop fronts and upper storey residential.*
- (h) To ensure new buildings are well designed and responsive to existing built form with appropriate street frontage heights.*
- (i) To maintain and encourage a diverse range of shops and services.*

In addition to the above objectives, the desired future character for the site are set in part by the objectives for “Site, Scale and Frontage” elements for medium density development as set out in Part 2.1, C2 of the WDCP 2022 . Those objectives are detailed below:

- (a) To ensure lot size and dimension are able to accommodate the appropriate building envelope, landscaping and service requirements.*
- (b) To ensure development sites have adequate street frontage to meet side setback and building requirements.*
- (c) To ensure lot sizes and building forms are appropriate to the streetscape.*
- (d) To provide guidance on the appropriate scale of development to complement the FSR controls within the WLEP.*
- (e) To encourage amalgamation of allotments to provide for improved design outcomes.*
- (f) To prevent the isolation of sites*

Despite the breach of the numerical standard, the proposed development is of an appropriate bulk and scale within the context of the site and locality as expressed within the Council controls. The SEE submitted with the amended DA outlines that the proposal is consistent with the desired future character objectives of the Rose Bay North Centre as well as the objectives of Part 2.1 of C2 of the WDCP 2022.

In particular, the proposal is demonstrably consistent with the desired future character objectives for the locality as stated within Council’s controls as the development:

- Does not interfere with the consistency of the treatment to the conservation of buildings of historic character.
- Maintains and improves the continuity of awnings over the footpath.
- Maintains Old South Head Road as the primary streetscape in the village with side streets as secondary frontages.
- Maintains a good distinction between the mixed use sections of Old South Head Rd and residential side streets with an appropriate shop-top form of development at the intersection of Old South Head Road and Oceanview Avenue.
- Maintains a clean and attractive environment, with waste disposal managed discreetly and efficiently within the proposed buildings and with a discrete waste holding area designed for Oceanview Avenue in accordance with Council’s request.
- Provides universal access to all users.
- Provides mid-rise buildings of high architectural merit which will be consistent with the scale of development and the shop top style of development within the street frontage in the Rose Bay North Centre.
- Is well designed with a high standard of street modulation and articulation and is responsive to existing built form with appropriate street frontage heights of four storeys consistent with the buildings immediately adjacent and within the North Rose Bay Centre.
- Will assist in encouraging diversity in the range of shops and services by providing contemporary new retail floor space at the corner of Old South Head Road and Oceanview Avenue.

Further, the new buildings respond to the bulk and scale of existing surrounding development within Oceanview Avenue (such as the four storey residential flat buildings located at 2, 4 and 6 Oceanview Avenue) and also within Old South Head Road to the north of the site the 3 and four storey building at 687 Old South Head Road and emerging and existing four and five storey development along either side of Old South Head Road within the commercial centre of North Rose Bay Village.

The proposed building envelope and building scale is also consistent with the building envelope and four storey scale of development approved at the site under the two recent approvals (i.e. DA-455/2021 for No. 671-683 Old South Head Road, Vaucluse and DA-374/2020 for No. 669 Old South Head Road, Vaucluse. The proposal achieves a height, a density and setback arrangement that is commensurate with the approved developments at the site.

(d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.

The proposed development is of an appropriate height and scale within the context of the site and locality. The new building responds to the height and scale of surrounding development immediately adjacent to the site and within the locality as well as the height and scale that is anticipated for development at the site by the WLEP and the Housing SEPP.

The amended DA has been designed to minimise any potential impacts upon the environmental amenity of neighbouring properties and the locality in terms of overshadowing, visual privacy, and views.

The architectural drawings (including the shadow diagrams) submitted with the DA demonstrate that the development (including the non-compliant building height components) will not result in additional overshadowing upon any openings in the western elevation of the existing residential flat building to the east of the site at 2 Oceanview Avenue from 9am to 3pm in mid-winter (this is demonstrated in the Shadow Diagrams and Sun Eye Diagram prepared by Bates Smart and submitted with the DA).

It is also noted that all the openings in the western and northern elevations of 2 Oceanview Avenue are to bedrooms and are not to living rooms.

It can also be stated that in terms of the preservation of amenity (with respect to solar access), a test for acceptable solar access amenity, as provided for in Part 4A of the ADG (and the Waverley DCP), is a minimum 2 hours solar access to internal living rooms and private open spaces for residential apartments between 9am and 3pm in mid-winter. In that regard the proposal fully complies such that overshadowing from the proposal does not affect the sunlight to the living rooms or the primary private open spaces of the apartments at the residential flat building at 2 Oceanview Avenue.

Further, and importantly, the proposed development as amended will result in greater solar access to the western openings of the residential flat building at 2 Oceanview Avenue when compared to the developments approved under DA-455/2021 and DA-374/2020. In that regard, it can be stated that the proposal will not only preserve amenity, but will improve it.

The proposal will not result in overshadowing of any public park, reserve or the like and will not inhibit important or significant existing views to or from a public place.

Having regard to amenity relating to visual privacy, the proposed development complies with the Objective of Part 3F-1 of the ADG (Visual Privacy) and the Objectives and Controls of the Waverley DCP at Part 2.15 (Visual Privacy and Security) of Part C2 (Other Residential Development).

Specifically, the rear (eastern) building wall of the proposed buildings within the development are setback by 6m (or more) from the southern boundary, consistent with the ADG Design Criteria at 3F.

It is also noted that the eastern building wall of the proposed buildings are separated by a distance of 12m or more from the western building wall of the RFB at 2 Oceanview Avenue in compliance with the Design Criteria at 3F of the ADG.

Having regard to the only other boundary that adjoins residential development, the northern side boundary, it is noted that the proposed building wall is setback by a minimum of 4.5m. This is greater than the minimum 3m for required under the ADG for non-habitable rooms (for buildings up to 4 storeys).

It is noted that the northern building wall of the proposed amended development has been designed so that any habitable rooms with north facing openings are provided with screening devices and are off-set against any openings within the southern building wall of the RFB at 687 Old South Head Road.

Further, the private open space areas at the northern end of the proposed development (i.e. balconies to serving Units UG.01, Apt 01.01 and 2.01) have been designed to include screening devices to their respective northern edges and or include 1m deep planters which ensure a 1m setback to the northern edge of those balconies.

By including these devices, the amended design ensures that there will be no direct overlooking opportunities from the proposed northern units into or over internal living spaces or private open spaces of units located at 687 Old South Head Road.

In summary therefore, the proposed development (in its non-compliant form) will preserve the environmental amenity of the adjacent residential properties, having regard to solar access and privacy, to a level that is appropriate and to a level that expected under the applicable planning provisions. That is, the breach of the FSR standards does not result in non-compliance with the applicable amenity controls (Council DCP and ADG) with respect to overshadowing, privacy and view loss.

Further, the proposal is considered to result in a better environmental amenity outcome for the adjacent residential properties when considered against the impacts of the developments that have been recently approved for the site, particularly having regard to overshadowing and visual privacy.

Notwithstanding the breach of the numerical FSR standards, the proposal achieves Objective (d) of the FSR standard.

4.3. Are there sufficient environmental planning grounds to justify contravening the development standards?

It is considered that there are sufficient environmental planning grounds to justify contravening the development standards which are detailed as follows:

Disconnect between height and FSR standard

Despite non-compliance with the FSR standards, the proposed development remains compliant with the building heights allowable under the Housing SEPP which provide for greater building height at the site above those allowable under the WLEP i.e. the proposed building height is well below the building height allowable under the provisions of s87(2)(c) of the Housing SEPP.

Further, the proposed development is generally consistent with the WLEP maximum building height development standard albeit that there is a minor non-compliance with that standard for the purpose of lift overruns and a small component of the northern end of the building. This is addressed in a separate Clause 4.6 Statement.

The fact that the proposed FSR effectively ‘fits’ within the applicable building height demonstrates that there is an appropriate correlation between the proposed FSR and the applicable WLEP building heights for the site.

Further, if the FSR were reduced to match the FSR allowed under Clause 4.4 of the WLEP, then the building height would be significantly below both the WLEP height and the bonus height allowed under the Housing SEPP. This would be an inappropriate correlation and would not meet the objective of the FSR development standard.

As such there is an apparent disconnect between the FSR development standards and the building height development standards and requiring compliance with the FSR standards would not be consistent with the orderly and economic use of the land and Objective (c) of the EP&A Act.

Avoidance of impacts

The variation to the FSR standard does not result in a development that will give rise to significant adverse overshadowing, privacy impacts, or view loss.

The non-compliance does not result in non-compliance with relevant solar access controls and do not result in adverse impacts to the amenity of existing adjacent residential development at 2 Oceanview Avenue and 687 Old South Head Road. Specifically, the proposal:

- The proposal complies with the provisions of Part 4A of the ADG and the Solar Access controls in the Waverley DCP for residential development; and
- The non-compliance does not result in any additional overshadowing upon any openings of adjacent development including openings in the western elevation of the existing residential flat building to the east of the site at 2 Oceanview Avenue from 9am to 3pm in mid-winter.
- The non-compliance with the FSR does not affect the sunlight to the living rooms or the primary private open spaces of the apartments at the residential flat building at 2 Oceanview Avenue in any way.
- The proposal will not result in overshadowing of any public park, reserve or the like.

The non-compliance does not result in non-compliance with relevant privacy controls and does not result in adverse impacts to the amenity of existing adjacent residential development at 2 Oceanview Avenue and 687 Old South Head Road with regard to privacy. Specifically, the proposal:

- Complies with the Objective of Part 3F-1 of the ADG (Visual Privacy) and the Objectives and Controls of the Waverley DCP at Part 2.15 (Visual Privacy and Security) of Part C2 (Other Residential Development).
- Is separated by a distance of 12m or more from the western building wall of the RFB at 2 Oceanview Avenue in compliance with the Design Criteria at 3F of the ADG.
- Is setback by a minimum of 4.5m the northern boundary and the northern building wall has been designed so that any habitable rooms with north facing openings are provided with screening devices and are off-set against any openings within the southern building wall of the RFB at 687 Old South Head Road, with north facing private open space areas having screening devices and or including 1m deep planters to ensure a 1m setback to the northern edge of those balconies.

Contextual fit

The proposal is consistent with the density, height and scale of the adjacent development and the desired future character of the locality as envisaged with the WDCP 2022.

The non-compliance with the FSR standard does not result in a building of a scale that is out of context with adjacent development and development with the North Rose Bay Village, such that the proposed density results in a four storey building, consistent with adjacent development to the immediate north and east of the site and with the scale of development to the south in the commercial area of the Rose Bay Village.

The development is consistent with the desired future character of the Rose Bay North Village Centre controls (at 3.1.11 of the WDCP 2022) and the “Building Design and Streetscape” and the “Site, Scale and Frontage” controls under C2 of the WDCP 2022, despite the non-compliance with the FSR standard.

Notwithstanding the breach of FSR, the proposed buildings achieve an appropriate scale and transition of height relative to surrounding contemporary and older buildings in the immediate vicinity of the site including the four storey developments at 2, 4 and 6 Oceanview Avenue and 687 Old South Head Road.

Notwithstanding the breach in FSR, the proposal satisfies other relevant controls and requirements including the Design Principles under Chapter 3, Part 5, Division 6 of the Housing SEPP, the Design Requirements under Chapter 3, Part 5, Division 5 of the Housing SEPP, the “Standards Concerning Accessibility and Usability for Hostels and Independent Living Units” under Schedule 4 of the Housing SEPP, and the relevant provisions of the WDCP 2022 and the Apartment Design Guide (ADG).

Contextually, the proposal is of a density and overall bulk and scale that fits with immediately adjacent development, and development in the wider North Rose Bay Village setting.

Existing approvals

The proposed density, height, scale and building envelope is consistent with the density, height and building envelope of existing approvals for the site.

Specifically, notwithstanding the breach in FSR, the proposal achieves a FSR that is commensurate with the combined FSR of DA-455/2021 and DA-374/2020, i.e. 1.43:1.

Further, the proposed building height that is commensurate with the building height approved under the two previous recent approvals for the site (i.e. DA-455/2021 and DA-374/2020).

Importantly, and notwithstanding the non-compliance to the development standards, it can be demonstrated that the proposed development will result in a better planning outcome compared to the previous approvals at the site for the following reasons:

- The development proposes an overall scale and density commensurate with previous approvals for the site, however it replaces an approved residential flat building component at the corner of Old South Head Road and Oceanview Avenue, with seniors housing. This is considered to be a benefit to the local and broader community in providing a land use that is in demand in the area.
- The proposal delivers greater amenity and benefit to residents and the public through the synergies that will be achieved by delivering seniors housing across both sites (i.e. car parking, storage, use of open space and other facilities are able to be consolidated across the wider site). The synergies and improvements achieved through the consolidated approach include:
 - A more cohesive and higher quality urban design and architectural response to the prominent site. The proposal allows for a two-building solution to the site (similar to the previous approvals) albeit with the separation of the buildings in a more favourable and appropriate location along Old South Head Road compared to the two approved buildings,
 - This results in a superior streetscape character through a reduction in the visual massing of the buildings along the Old South Head Road elevation. It also results in reduced overshadowing of

the residential flat building to the east of the site at 2 Oceanview Avenue, because of the more northern placement of the building separation.

- A reduction in on-site car parking from 64 to 49 spaces and thereby reduction in traffic generation.
- An increase in deep soil area.
- An increase in basement storage volume for residents.
- Reduction in overshadowing to the residential flat building at 2 Oceanview Avenue to a point that no openings in the western elevation of that building will be in shadow between 9am and 3pm in mid-winter.

Therefore, and notwithstanding the breach in FSR, in planning terms, the scale and density of the proposal is entirely consistent with the approved scale of two recent development approvals for the site but will result in a better planning outcome compared to those approvals.

Provision of affordable housing

The proposal will result in public benefit as it seeks to provide for seniors housing at the site within a development that is commensurate in terms of density and building height with previous approvals for the site, but that will be superior in a public benefit and planning sense in that it will reduce impacts for adjacent development, improve the streetscape and urban design outcomes and improve amenity for future residents in comparison to the previous approvals.

Additionally, the proposal is accompanied by a VPA which involves a monetary contribution that would allow for the realisation of affordable housing by Waverley Council.

The VPA is to the value of the affordable housing (i.e. 4 dwellings) that would otherwise have been realised at No. 671-683 Old South Head Road in accordance with Development Consent 455/2021. Further, the VPA provides for additional monetary contributions relating to the additional GFA (and based upon Council's VPA Policy) that is in excess of the GFA envisaged by the development standard relevant to the southern part of the site, being 669 Old South Head Road.

In providing affordable housing through the proposed VPA the proposal achieves consistency with Objective (d) of the EP&A Objective (d) under Section 1.3 which states:

"The objects of this Act are as follows—

.....

(d) to promote the delivery and maintenance of affordable housing,"

The proposal is in the public interest

The proposal is in the public interest because, notwithstanding the numerical non-compliance with the standards, the development remains consistent with the objectives of the FSR standard (as set out above under section 4.2.1 of this Statement) and the objectives for the E1 and R3 land use zones and the Principles of the Housing SEPP as set out below.

- **Objectives of the Zones**

The proposal remains consistent with the objectives of the R3 Medium Density Residential and E1 Local Centre zones, despite the non-compliance with the FSR standard as demonstrated in the assessment of the objectives below.

R3 Zone Objectives	Comment
<i>To provide for the housing needs of the community within a medium density residential environment</i>	The proposal will result in the construction of 31 new independent living units for seniors, including ancillary facilities to accommodate their needs. The proposed development is of a land use, scale and density that is commensurate with a medium density residential environment.
<i>To provide a variety of housing types within a medium density residential environment</i>	The proposal results in a diverse dwelling mix across the site to accommodate a variety of housing types for seniors and the proposal also results in the addition of seniors housing to the locality and thereby increasing the variety of housing types available in the medium density zone.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	The proposal accommodates ancillary facilities to the seniors housing which are generally located within the Lower Ground Level of the development. The retail/business premises on the southern extent of the site will create additional services following its establishment.
<i>To maximise public transport patronage and encourage walking and cycling</i>	The site is within close proximity to public transport routes (i.e. bus routes) along Old South Head Road immediately in front of the site. The site proposes to accommodate 38 bicycle parking spaces in the Basement 1 Level to provide opportunities for cycling to and from the site. Section 7 of the Traffic and Parking Assessment prepared by TTPA includes a Green Travel Plan to encourage sustainable transport outcomes by way of encouraging active transport options. It is also noted that the proposal involves less on-site car parking compared to the previous approvals for the site (i.e. there will be a reduction in vehicular trip generation from the site when compared to the previous approvals).
<i>To increase or preserve residential dwelling density</i>	The site currently accommodates seven (7) detached dwellings, which will be replaced with a seniors housing development that provides a total of 31 independent living units, thereby increasing residential dwelling density.
<i>To encourage the supply of housing, including affordable housing, that meets the needs of the population, particularly housing for older people and people with disability</i>	The supply of independent living units will provide housing for older people and mobility impaired people and therefore contribute to the housing needs of the population. It is noted that the current proposal is not subject to the requirements of the former Seniors Housing SEPP, which required the provision of affordable housing places in order to achieve bonus floor space. Notwithstanding, the applicant has submitted a VPA to Council seeking to provide a monetary contribution for the

	purpose of the provision of Affordable Housing and has been prepared in accordance with Waverley Council's Planning Agreement Policy 2014. The VPA seeks to provide similar positive affordable housing outcomes as that which were previously approved under Condition No. 5 of DA-455/2021.
<i>To provide development that is compatible with the desired future character and amenity of the surrounding neighbourhood</i>	The proposal is consistent with the desired future character of both the Rose Bay North Centre and the medium density residential zone as set out within Parts C2 and E3 of the WDCP 2022. The proposed massing and design of the development, which is similar to that which was approved under DA-455/2021, will continue to make a valuable (if not improved) contribution to the streetscape and one that is consistent with the relevant provisions of the WDCP 2022.
<i>To promote development that incorporates planning and design measures that reduce the urban heat island effect</i>	The proposal incorporates building design measures to improve sustainable development outcomes, which also includes a comprehensive tree planting schedule to support the canopy coverage of the proposal.
<i>To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping</i>	Reference is made to the Landscape Plans prepared by NBLS. The proposal will result in an increase in deep soil coverage for the site above what was approved under DA-455/2021 and DA-374/2020. The proposal is consistent with the provisions of deep soil and landscaped area provisions of the Housing SEPP as they apply for seniors housing and also the relevant provisions of the ADG.

Table 2: Medium Density Residential Zone Objectives Assessment Table

E1 Zone Objectives	Comment
<i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area</i>	The proposed seniors housing development incorporates a retail/business premises component on part of the ground floor, thereby providing a mix of uses that cater to the local community and activating the street level at the intersection of Oceanview Avenue and Old South Head Road.
<i>To encourage investment in local commercial development that generates employment opportunities and economic growth</i>	The development will create employment within both the seniors housing component and the retail/business premises component of the southern building. The proposal will also generate short-term employment growth by way of the construction of the proposed development and will also provide long-term employment through the ongoing jobs created by the retail component and the operation and management of the seniors housing development.
<i>To enable residential development that contributes to a vibrant and active local</i>	The part of the site that is identified within the E1 Local Centre zone contains independent living units above the

<i>centre and is consistent with the Council's strategic planning for residential development in the area</i>	ground floor level. The design of the residential accommodation creates visual interest and strong articulation on the corner of Old South Head Road and Oceanview Avenue which will promote vibrancy for the area. The proposal to provide seniors housing across the site is consistent with Waverley Local Housing Strategy. In particular it is noted that within Part 6.4 of the Strategy, there is identified an ongoing need and increasing demand (and potential ongoing shortfall) for seniors housing. The proposed development will assist in meeting the identified demand through the provision of high quality seniors housing within the LGA.
<i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings</i>	The proposal will include a retail/business premises on part of the ground floor level of the southern building that is within the E1 Local Centre zone.
<i>To strengthen the viability of Waverley's existing business centres as places of vitality for investment, employment and cultural activity</i>	The nature and scale of the proposed retail/business premises use on the ground floor level, while relatively small, will nonetheless add to the commercial offering within the Rose Bay North Village and strengthen its viability.
<i>To maximise public transport patronage and encourage walking and cycling</i>	The proposal will satisfy this objective in the same manner as the public transport patronage objectives identified for the R3 Medium Residential zone.
<i>To encourage the provision of affordable housing</i>	We note that there is no requirement under the relevant parts of the current LEP or Housing SEPP to provide affordable housing on-site. It is noted that the current proposal is not subject to the requirements of the former Seniors Housing SEPP, which required the provision of affordable housing places in order to achieve bonus floor space. Notwithstanding, the applicant has submitted a VPA to Council, seeking to provide a monetary contribution for the purpose of the provision of Affordable Housing. The VPA has been prepared in accordance with Waverley Council's Planning Agreement Policy. The VPA seeks to provide similar positive affordable housing outcomes as that which were previously approved under Condition No. 5 of DA-455/2021.
<i>To provide for a range of other uses, including light industrial, that serve the surrounding neighbourhood without impacting on the amenity of the adjoining uses</i>	The proposal does not include uses that will adversely impact the amenity of adjoining land. The seniors housing is a type of residential accommodation that is consistent with land uses at adjacent sites to the north and east. The proposed ground floor retail/business space over the E1 zoned land is consistent with the site's zoning and with the approved retail/business land that has operated at the site for a considerable time.

<i>To ensure development is of a height and scale that achieves the desired future character of the neighbourhood</i>	The height and scale of the proposal is commensurate with the height and scale of development previously (recently) approved on the site. The design and visual interest created by the proposal will help to positively develop the future character of the neighbourhood. The proposal will not result in adverse view loss, visual privacy or overshadowing and is consistent with the desired future character of the Rose Bay North Village Centre controls (at 3.1.11 of the WDCP 2022) and the “Building Design and Streetscape” and “Site, Scale and Frontage” controls under C2 of the WDCP 2022.
<i>To promote employment growth by giving preference to commercial development over residential development</i>	The proposal is primarily for the purposes of seniors housing, with the retail/business premises use serving an ancillary function on part of the ground floor level of the southern building. The proposal will nonetheless provide a contemporary new commercial space and will activate the ground floor at the prominent corner site. The proposal will provide a rational transition between the E1 Local Centre Zone and the immediately adjacent R3 Medium Density Zone in terms of land uses. This approach is consistent with the previous approvals for the site and was supported by Council as part of the pre-DA process. It is considered that the proposed function of the parcel of land within this zone better serves the needs and amenity of the local community over a dominant commercial land use.
<i>To provide active ground floor uses to create vibrant centres</i>	As defined by Clause 6.5 of WLEP 2012, the proposal includes an active ground floor use with the retail/business premises facing Old South Head Road. The design of the proposal and its prominent corner location will create vibrancy along the street.

Table 3: E1 Local Centre Zone Objectives Assessment Table

- Principles of the State Environmental Planning Policy (Housing) 2021

The Housing SEPP identifies the “Principles of the Policy” under Section 3. The proposed development is consistent with the Principles of the policy as detailed below:

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*

The proposal is primarily for the purpose of high quality seniors housing in a location with strong demand for seniors housing. The proposal will result in the provision of diverse housing and is consistent with this principle.

- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

The proposal is primarily for the purpose of high quality seniors housing in a location with strong demand for seniors housing. The proposal will result in the provision of housing for seniors and people with a disability and is consistent with this principle.

(c) ensuring new housing development provides residents with a reasonable level of amenity,

The proposed seniors housing development is of a high standard and will result in a high level of amenity and this is reflected in the compliance of the development with the relevant sections of the ADG and DCP and the Seniors Housing development standards (under Schedule 4 of the SEPP).

(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

The proposed seniors housing development is located at the northern end of the Rose Bay North Village and thus is well located to take advantage of the existing services in that village. The site is also located with frontage to Old South Head Road, providing good access to public transport (bus) routes which can be accessed on Old South Head Road.

(e) minimising adverse climate and environmental impacts of new housing development,

The proposal is supported with BASIX certification, satisfies the applicable WDCP 2022 environmental sustainability requirements and is capable of achieving a NABERS Tenancy commitment agreement if required by Council. The proposal is consistent with the Policy Principle.

(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

The proposal displays high architectural merit and will provide a positive addition to the streetscape at the northern end of the Rose Bay North Village. The proposal includes a pair of highly articulated buildings, one of which wraps around the corner of the prominent intersection of Old South Head Road and Oceanview Avenue. This building includes active uses at ground level and provides a skilful transition from the E1 zone into the R3 zone at the northern edge of the Village. Overall, the proposed buildings include high quality external finishes and a comprehensive landscape design.

The development will present a better urban design and street elevation outcome compared to the streetscape result that was approved under the previous consents for the site (being DA 374/2020 and DA 455/2021). This will be achieved by providing a more unified built form (compared to the two approved buildings that contain quite varied architectural styles).

The proposed design displays greater streetscape articulation and will lessen the visual massing along the Old South Head Road streetscape by positioning the building separation of the two buildings further north along Old South Head Road (compared to the situation approved under DA 374/2020 and DA 455/2021).

The proposal is consistent with the Policy Principle.

(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,

The proposal seeks to provide seniors housing in a location with demand for this type of residential accommodation. The proposal, although not providing short-term rental accommodation does not inhibit the delivery of such accommodation and is not inconsistent with the Policy Principle.

(h) mitigating the loss of existing affordable rental housing.

The proposal does not result in the loss of existing affordable housing. It is noted however that a previous approval for the site, being DA 455/2021 involved the inclusion of affordable housing at the site.

The applicant has therefore proposed a VPA which seeks to provide a monetary contribution for the provision of affordable housing. The VPA has been prepared in accordance with Waverley Council's Planning Agreement Policy.

The VPA involves a monetary contribution based upon market value of comparable residential apartments and thereby seeks to provide a similar positive affordable housing outcome as that which was previously approved under Condition No. 5 of DA-455/2021.

The proposal satisfies the Policy Principle.

In this case, no public benefit would accrue in the circumstances of requiring strict numerical compliance with the FSR development standard when it has been demonstrated that, despite the numerical non-compliance, the proposed development will achieve consistency with the development standard objectives, the land use zone objectives and with the Policy Principles of the Housing SEPP.

5. Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the FSR standard at Section 87(2)(b)(i) of the State Environmental Planning Policy (Housing) 2021 and Clause 4.4 of WLEP 2012.

As demonstrated in this submission, it would be unreasonable and is unnecessary for strict compliance with the FSR standards to be enforced in this instance.

Notwithstanding the non-compliance with the FSR standards, it has been demonstrated that the proposal achieves the objectives of FSR development standard at Clause 4.4 of WLEP 2012.

For the reasons set out in detail under section 4.3 of this Statement, it has also been demonstrated that there sufficient environmental planning grounds to justify contravening the development standards in this instance.

The non-compliance is not considered to result in any precedents for future development within the locality or broader LGA, given the site circumstances and surrounding pattern of development, and particularly as the proposed development is of a similar density (FSR), height, scale and as that which has recently been approved for the site through the issue of Development Consents DA-455/2021 and DA-374/2020.

It is concluded that the variation to the development standard is well founded.