

Clause 4.6 – Exceptions to Development Standards – Maximum Floor Space Ratio for Shop-Top Housing (cl 4.4A(14)(a))

Address: 36-50 Hercules Street, Chatswood and 256-260 Victoria Avenue, Chatswood

Proposal: The proposal seeks development consent for the demolition of all existing structures and construction of five (5) mixed use buildings containing retail premises, business premises, shop top housing, car parking, childcare centre, landscaping, restoration of a heritage building and associated works.

Introduction

1. This is a written request on behalf of the applicant in relation to DA -2014/445 pursuant to clause 4.6 of the Willoughby Local Environmental Plan 2012 ("WLEP 2012") seeking an exception to a development standard contained in clause 4.4A(14) of WLEP which provides:

Development consent must not be granted for shop top housing on land in Zone B4 Mixed Use if:

- (a) for land bounded by Victoria Avenue, Hercules Street, Oscar Street and Albert Avenue, Chatswood—the floor space ratio for the housing will exceed 1.25:1, or
- (b) for all other land in that zone—the floor space ratio for the housing will exceed 1:1.

2. The land is zoned B4 Mixed Use pursuant to the WLEP 2012.
3. Clause 4.4 of the WLEP2012 establishes the maximum FSR for land within the Willoughby LGA as identified on the Floor Space Ratio Map (shown on Figure 1 below). The applicable FSR for the land is 2.5:1.

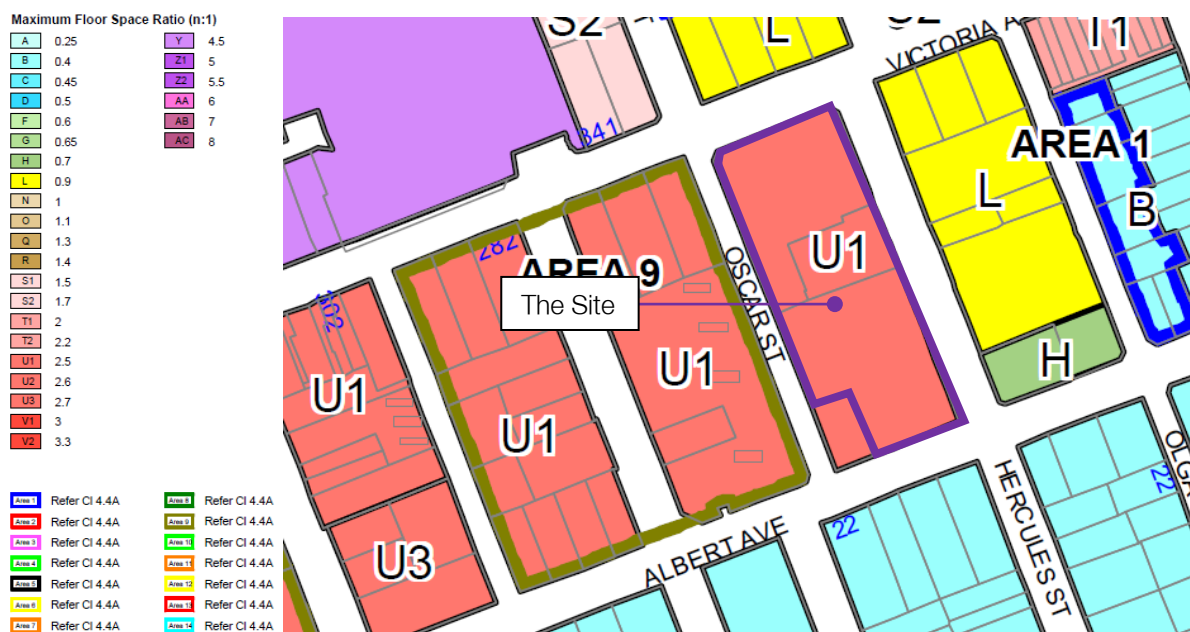


Figure1: Floor Space Ratio Map – WLEP 2012

4. The maximum FSR for the residential component of shop-top housing on the land is 1.25:1.
5. The proposed development is for shop top housing where the floor space ratio for the housing is 1.87:1, which exceeds the development standard of 1.25:1.
6. That leaves available a FSR of 1:25:1 for the non-residential component of shop-top housing.
7. There is no minimum or maximum requirement for non-residential development on the site. However if you wish to develop residential in the form of shop top housing then that form of development must comply with the definition of shop top housing that requires retail and/or business premises on the ground floor.
8. Compliance with the definition of shop top housing and the maximum FSR of 1.25:1 results in a development that has retail or business premises on ground floor sufficient to meet the definition of shop top housing and then 1.25:1 residential above.
9. On this particular land the ground floor retail/business premises component would equate to around 0.5:1.
10. A shop top housing development that complied with the standard would therefore achieve a FSR of 1.75:1 with the option, but not the obligation, to include a further 0.75:1 non residential FSR
11. The proposal is for shop top housing. It has a total FSR of 2.36:1. It has a non-residential component of 0.49:1 and a residential component of 1.87:1.
12. There is no development standard that requires a minimum amount of non-residential floor space on the site. There is a default position that if land is developed for shop-top housing, it is limited to 1.25:1, which leaves a FSR of up to 1.25:1 for non residential, a sufficient component of which has to be on the ground floor.
13. The development standard in issue is limited to the residential component of development for the purpose of shop top housing. There are other forms of residential development permissible in the zone such as boarding houses and seniors living which could achieve a FSR of 2.5:1 without the need for non-residential FSR.

Proper Application of Clause 4.6

14. Clause 4.6 of WLEP 2012 relevantly provides:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *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, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) ...
- (7) ...
- (8) ...

15. Clause 4.6 has five requirements as follows:

- (1) There must be a written request from the applicant that seeks to justify the contravention of the standard.
 - (2) That written request must seek to justify contravention of the standard by demonstrating that:
 - a. Compliance with the development standard is unreasonable or unnecessary in the particular circumstances of the case; and
 - b. That there are sufficient environmental planning grounds to justify contravening the development standard.
 - (3) The consent authority must consider the written request.
 - (4) The consent authority must be satisfied that:
 - a. the written request has adequately addressed the matters that are required to be demonstrated, i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds.
 - b. the development is 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.
 - (5) Concurrence to the variation must have been obtained from the Director-General.
16. It should be noted that steps 1 and 2 are matters for the applicant. Steps 3 and 4 are matters for the consent authority. Step 5 is a matter for the Director-General, however in this case the Director-General has issued a blanket concurrence to variations to development standards where the variation is made pursuant to an environmental planning instrument which contains clause 4.6 in the form contained in the standard template or in similar terms.
17. This request has been prepared having regard to the latest authority on clause 4.6, contained in the following guideline judgements:
- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
 - *Wehbe v Pittwater Council* [2007] NSWLEC 827

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')

18. The principles that stem from the relevant authorities may be summarised as follows:

- (a) The relevant objectives are those stated in the controls not unidentified underlying objectives at [57] in Four2Five No. 1;
- (b) That the sufficient environmental planning grounds have to be particular to the circumstances of the proposed development to the site at [60] in Four2Five No. 1; and
- (c) The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* remain relevant however you need something more than way 1 in *Wehbe* to satisfy the unreasonable and unnecessary test in clause 4.6(3)(a) as that test is now encompassed in clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.

19. Method 1 in *Wehbe* requires a demonstration that the objectives of the relevant development standard are achieved notwithstanding non-compliance with the numerical standard. As a result of Four2Five, it is now necessary to demonstrate something more than achieving the objective of the standard. A development that contravenes the development standard and as a result achieves the objective of the development standard to a greater degree than a development that complied with the standard, would suffice.

Assessment of the Proposed Variation under Clause 4.6

The Relevant Steps

Step 1 - The written request

20. This document constitutes the written request of the applicant which seeks to justify contravention of the standard.

Step 2 - Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

21. In the particular circumstances of this case, compliance with the development standard is unreasonable or unnecessary for 3 reasons:

- i. The proposed development with an overall FSR of 2.36:1, and a 'housing' FSR of 1.87:1 complies with the objectives of the standard and the objectives of the zone to a better degree than a development that complied with the housing FSR standard of 1.25:1, because:
 - a. There are 11 stated objectives to the FSR standard.
 - b. Those objectives apply to both the overall FSR standard or 2.5:1 and the housing standard of 1.25:1.
 - c. Some of the objectives are probably not relevant to the housing standard as they inform other exceptions to the overall FSR standard.
- ii. A development that complied with the housing FSR standard of 1.25:1 would defeat or thwart the relevant objectives of the development standard.
- iii. The Council has abandoned the housing standard on the subject land by granting early consents that contravened the standard.

22. Each reason is addressed as follows.

The proposed development with an overall FSR of 2.36:1 and a housing FSR of 1.87:1 complies with the objectives of the standard and the objectives of the zone to a better degree than a development that complied with the housing FSR standard of 1.25:1.

23. Consistent with the first method in *Wehbe*, the proposed development achieves the objectives of the standard and the zone to a greater degree than a development that complies with the standard.
24. To the extent that the FSR objectives go to total FSR they are achieved because the proposal is less than 2.5:1. Interestingly objectives (a) and (d) refer back to the zone objectives. It is the third zone objective that is most relevant. That objective says that residential should only be permitted where it contributes to the vitality of the centre but does not undermine the commercial role of the centre. The objective seeks to find the appropriate balance between residential and non-residential uses in the B4 zone. The objective applies to the whole of the B4 zone so that it might be achieved by having only commercial on one site and only residential on another. It might also be achieved by having mixed use development on all sites.
25. The proposed development, with an overall FSR of 2.36:1 and a housing FSR of 1.87:1, complies with the objectives of the standard and the objectives of the zone to a better degree than a development that complies with the housing FSR standard of 1.25:1 for the following reasons:
- (a) There are 11 stated objectives to the FSR standard.
 - (b) Those objectives apply to both the overall FSR standard of 2.5:1 and the housing standard of 1.25:1.
 - (c) Some of the objectives are not relevant to the housing standard as they inform other exceptions to the overall FSR standard.
 - (d) In *Four2Five No.1*, Commissioner Pearson held that it was no longer appropriate to seek to identify underlying objectives of the standard but that the focus must be upon the stated objectives. This finding was not disturbed by Justice Pain on appeal in *Four2Five No 2*.
 - (e) In this case the objectives relevant to the housing standard of 1.25:1 are (a), (f) and (g).
26. It is necessary to ask (Wehbe test 1, as modified by *Four2Five No 1*) in respect of each of the relevant objectives - does the proposal which has a residential FSR of 1.87:1 and a non-residential component of 0.49:1 achieve each of the relevant objectives better than a development that had a residential FSR of 1.25:1? If the answer is yes, then it is unreasonable and unnecessary to comply with the development standard.
27. In the alternative, you ask:
- (a) Is the stated objective not relevant to the development?
 - (b) Would the stated objective be defeated or thwarted if compliance was required?
 - (c) Has the development standard been virtually abandoned or destroyed by Council's own actions in granting consents?
 - (d) Is the zoning of the land as B4 unreasonable or inappropriate so that a standard that was appropriate for the zoning is also inappropriate?

Consideration of relevant objectives to the FSR standard

- (a) *to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*
28. This objective has two limbs. The first limb of this objective (environmental capacity) informs the overall FSR control of 2.5:1. That limb of the objective is met or deemed to be met by the proposal which has an overall FSR of 2.36:1. The second limb of the objective which is to limit intensity of development so it will be carried out in accordance with the zone objectives of the land is relevant.
29. The zone objectives for the B4 land are as follows:
- *To provide a mixture of compatible land uses.*
 - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
 - *To allow for city living on the edges of the city centre of Chatswood, which supports public transport use, shopping, business and recreational services that contribute to the vitality of the centre, without undermining its commercial role.*
30. It can be assumed that the purpose of the housing limitation of 1:25:1 was to ensure that development is carried out in accordance with the zone objectives.
31. Annexed to this written request is an economic report prepared by Hill PDA. That report makes the following conclusions:
- i. A development that complied with the overall FSR and housing FSR standard would need to provide 11,000m² of non-residential floor space;
 - ii. It is not feasible to provide that amount of non residential floor space as the cost of providing it exceeds the price that would be recovered on sale;
 - iii. If 11,000m² of non-residential floor space was provided it would not be occupied;
 - iv. The reasons for ii. and iii. is that there is no demand for non-residential floor space having regard to the distance of the site from the transport nodes and the proximity of the site to the commercial core which provides better quality and located non residential floor space; and
 - v. Locating non-residential floor space above ground level is not desirable.
32. The economic evidence demonstrates that a developer would not construct any more non-residential floor space on the site than is required and that demand for non residential floor space is influenced by the particular circumstances of the case.
33. The only requirement for non-residential floor space on the site comes about as a result of the definition of shop top housing which requires housing to be located above ground floor retail or business premises. Therefore the only requirement for non-residential development is to provide either business or retail premises at ground floor so as to meet the definition of shop top housing.
34. Effectively, the whole of the ground floor of the proposed buildings comprise retail or business uses.
35. A large proportion of the site which fronts Victoria Road which is the most suitable for retail or business premises is to be retained as an open public plaza to protect the curtilage of the heritage item and as a result the development has been pushed back and made higher.
36. The economic evidence confirms that because of the particular location of the site non-residential floor space above ground level is undesirable.

37. The consequence of the above is that a development of the site that was forced to comply with the housing standard would:

- i. Provide only ground floor non-residential space concentrated towards Victoria Road which would have a greater impact on the heritage item;
- ii. Construct non-residential space above with some ground floor level, however that space is likely to be unoccupied and such an outcome would be contrary to the zone objective incorporated into objective (a) of the FSR standard as empty non-residential space will adversely impact on the vitality of the centre and will compromise the commercial viability of the centre because empty space fails to attract people and will discourage the development of further space because of the lack of demand;
- iii. By limiting the amount of non-residential floor space on the site the bulk and scale of the development is reduced to a level less than that anticipated by the controls and therefore results in a building that is out of character with the desired future character.

38. The logical conclusion is that the proposed development which contravenes the development standard with a housing FSR of 1.87.1 achieves objective (a) of the FSR objectives to a greater degree than a development that did not comply.

- (f) *to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*

39. This objective seeks to "allow growth" for a mix of non-residential uses.

40. The economic evidence demonstrates that even if the non-residential floor space was built it would not be occupied.

41. While it might be argued that the purpose is to provide space for future growth, the decision as to whether the space should be provided must be made based on the current economic conditions. This is because there is no obligation on a developer to include non-residential floor space above ground floor. As the construction of non-residential floor space above ground floor level is not mandatory and also not feasible the alternative outcome is to simply build a smaller building. This outcome is contrary to the objectives for increased intensity of development in centres near transport and employment and if the development is built without the non-mandatory and unfeasible additional non residential floor space the resultant development will still be a large strata titled so that the non-residential floor space will never be able to be retro-fitted. An indirect advantage of providing additional housing on the site is to provide a population who in the future may create demand for retail, business and commercial uses in the future, on other land more appropriately located in the B4 zone.

42. For the above reasons, the development as proposed better achieves objective (f) than a development that complied with the numerical standard simply because a development that complied with the standard would either not add to the mix of retail, business or commercial purposes because it would either not be built or would not be used for those purposes because it would remain vacant.

43. Again it is the particular circumstances of the site referred to earlier that bring about this outcome.

- (g) *to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

44. The subject land is located to the area east of the North Shore Rail Line.
45. According to the objective, the intent is that the site should reinforce the primary character of the land as being the retail shopping core rather than the commercial office core.
46. Non-residential retail uses are more suited to ground floor rather than upper floors.
47. In the particular circumstances of this case the best location for retail would be at ground floor on Victoria Avenue.
48. The proposed development achieves this objective to a better degree than a development that complied with the standard because any non-residential space would have to be provided above ground and would therefore compete with office space in the B3 core.
49. Any retail space provided at the upper level would be undesirable and therefore would not reinforce the primary retail character as it would be empty.
50. Again the reasons for this is because of the particular circumstances of the site being its location on the fringe, adjoining residential, away from the commercial core and the existence of the heritage item and the improved environmental outcome by providing a public plaza which provides a curtilage to the heritage item.

A development that complied with the housing FSR standard of 1.25:1 would defeat or thwart the relevant objectives of the development standard (Wehbe test 3)

51. A development that complied with the housing standard or 1.25:1 would defeat or thwart the objectives of the standard.
52. A development that complied with the housing FSR standard or 1.25:1, would either:
 - i. construct additional non-residential floor space within an envelope which would be consistent with the desired future character of the locality however the non-residential floor space above ground level would remain vacant which would defeat the objective of intensifying development in proximity to transport and jobs and the zone objective which is incorporated by reference to add vitality and not undermine the commercial function of the B4 zone; or
 - ii. not develop non-residential floor space above ground floor leaving a development that defeats the objective of intensifying development in proximity to transport and jobs and bringing about a much large building form which is consistent with the bulk and scale objectives and the objectives to provide for public plazas, conservation of heritage items and affordable rental housing which is funded by developing in accordance with the overall FSR standard.

Whether there has been an abandonment of the FSR development standard on the land?

53. The housing FSR development standard of 1.25:1 in clause 4.4A(14) applies specifically to the site.
54. The council has previously granted development consent for parts of the site that have contravened the housing standard of 1.25:1. DA2013/142 granted approval over a portion of this site for a mixed use development that permitted a greater amount of shop top housing. This variation was supported by an economic analysis by Hill PDA.
55. Council supported the variation on the basis that the proposal incorporated at ground level a suitable mix of retail uses and a commercial level and a childcare centre and serviced apartments, all contributing to Chatswood's retail and social roles, and local employment generation while maintaining financial viability of the proposal due to the residential component.
56. The current site includes the land the subject of the previous consent plus additional land.

57. The additional land has a greater claim for variation than the land the subject of the previous consents because the additional land includes the land on which the heritage item is located and upon which the public plaza is to be created which is not to be developed so as to preserve the curtilage of the heritage item.

There are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))

58. It is clear from the above reasoning that the proposed development that contravenes the housing FSR standard brings about a better environmental outcome than a development that complied with the standard.
59. A development that complied with the standard would not protect and enhance the heritage item, is likely to result in a building form which is inconsistent with the desired future character or if built would remain vacant and defeat the objectives to intensify development around transport and jobs and the objective of adding vitality to the centre and not undermining its commercial role.

Steps 3 and 4

60. In considering the request to vary the standard, the consent authority would be satisfied that the written request adequately addresses that compliance with the standard is unreasonable and unnecessary in the particular circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.
61. The consent authority would conclude that the development is in the public interest because it is consistent with the objectives of the standard and the objectives of the B4 zone.
62. Compliance with the zone objectives has been addressed above. The balance of the objectives of the standard are addressed as follows.

(a) to limit traffic generation as a result of that development,

63. The traffic generation of the development is limited by the number of available car parking spaces which complies with Council's controls in the Willoughby Development Control Plan ('WDGP').
64. Further, the proposal includes works to improve the fluency of the traffic around the development, as described in the Traffic and Assessment Report prepared by Varga Traffic Planning Pty Ltd submitted in June 2015.
65. The use of the floor space for residential use is a lower impact use than many commercial uses. Accordingly, the proposal complies with the objective to limit traffic generation.

(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

66. The proposed built form easily complies with the maximum FSR control at clause 4.4. The proposed FSR and the design of the buildings are such that the amenity impacts on adjoining and nearby properties is minimised to acceptable standard.

(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,

67. The bulk and scale of the development is controlled by the overall FSR control of 2.5:1 which is complied with.

68. The bulk and scale set by the maximum FSR enables:
- A built form that includes a mixture of compatible land uses (notwithstanding that a mixture is only required in the zone, not on specific land);
 - Integration of business and retail uses in the most accessible locations of the site (being the ground floor); and
 - City living on the edge of the city centre of Chatswood without undermining its commercial role. The limitation on retail and business uses will mean that the development will contribute to the vitality of the centre. Strictly, applying the standard in 4.4A(14) would likely have the effect of creating a 'white elephant' which would detract from the vitality of the centre.
69. Accordingly, the bulk and scale of the proposal better meets the objectives of the zone as a result of the mix provided.
- (e) to permit higher density development at transport nodal points,*
70. The proposal provides a higher density development consistent with the maximum FSR in the B4 zone, which is near a transport nodal point.
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*
71. The plaza area provides a generous functional and accessible open space with good amenity to service workers, residents and visitors.
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*
72. The built form is arranged in 'buildings' set in landscaped settings which respects the surrounding built form. Compliance with the overall maximum FSR demonstrates the appropriate 'envelopes' for the land.
- (j) to encourage the consolidation of certain land for redevelopment,*
73. The proposed development consolidates parcels, with the exception of 17 Albert Street. 17 Albert Street is able to achieve the maximum FSR without it being consolidated into the Land.
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*
74. The proposal has not sought to rely on the heritage incentives set out in clause 5.10 as the reasons for providing flexibility to clause 4.4A(14) can be achieved within the confines of clause 4.6.
75. The conservation incentives in clause 5.10(10) are such that a consent authority may grant consent to development for any purpose (which includes a greater amount of shop top housing than prescribed by clause 4.4A(14)) for land on which a heritage item is erected if it is satisfied that:
- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
 - (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
 - (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*

- (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
 - (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*
76. The proposed development includes facilitation of conservation of the heritage item as it is proposed to restore the item to re-create original features such as open verandahs and loggias. Further, the proposal will not impact on, but will conserve, features of original surviving fabric, and will create a generous curtilage so that the item may be appreciated by the public.
 77. In Council's assessment of the application, in the report to the JRPP dated 18 August 2015, it is noted that 'Subject to conditions, the works are satisfactory, relate well to the heritage significance of the HCA to the south and meet objectives in clause 5.10'.
 78. The proposal encourages community facilities (the open public plaza), affordable housing (which is included in the residential uses above ground) and will conserve the heritage item. The proposed residential floor space will assist in providing each of these benefits and therefore the proposal complies with objective (k).
 79. The consent authority would be satisfied that the development is in the public interest as it is consistent with the objectives of the standard and the objectives for development within the B4 zone.

Conclusion

80. The proposed variation is based on the reasons contained within this formal request for an exception to the standard.
81. Development standards are a means of implementing planning purposes for a development or area.
82. The development will not result in unacceptable impacts with regard to the amenity of adjoining properties. A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses and would not result in an appropriate urban design response to the site. In the context of the locality it would be unreasonable for strict compliance to be enforced.
83. In the circumstances of this case the land:
 - i. Includes a heritage item which takes up an approximate area of 750m² of the land.
 - ii. Includes a heritage item that is located on the street which is most likely to support non-residential uses.
 - iii. Is located on the fringe of the B4 zone adjacent residential on 3 frontages, away from the commercial core.
84. The consent authority has the benefit of economic evidence that says non-residential beyond what is proposed is not feasible for two reasons. One is that it costs more to build it than what it can be sold for and secondly that even if you built it there would be no demand for it.
85. Assume that the applicant was to build the development with 1.25:1 non residential and 1.25:1 residential shop top housing. On the economic evidence the non-residential above ground floor and over 0.49:1 is unlikely to be occupied. That would leave a building with vacant space. Vacant space would undermine the commercial role and detract from the vitality of the B4 zone. While that is a zone objective it is incorporated by reference into objectives (a) and (d) of the FSR standard. A

development that complied with the FSR standard of 1.25:1 would therefore defeat or thwart objectives (a) & (d).

86. The development would result in an orderly and economic use of land, through maximising development yield while ensuring amenity is maintained and preserved to surrounding development.
87. As demonstrated in this request, it would be unreasonable for strict compliance with the shop-top housing FSR control to be enforced. It is concluded that the variation the development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case.

Attachment 1: Commercial Demand and Viability Analysis
prepared by Hill PDA, September 2015