

# 74 Carlton Crescent, Summer Hill

Clause 4.6 variation to Floor Space Ratio

On behalf of  
Iglu No. 210 Pty Ltd  
August 2019



# 1 Introduction

The Development Application (DA) for 74 Carlton Crescent, Summer Hill (subject site) proposes a boarding house development for the exclusive purpose of student accommodation. The proposed development will result in a minor exceedance of the maximum floor space ratio (FSR) development standard applicable to the site. This Clause 4.6 variation seeks to vary the FSR control (Clause 4.4) in the Ashfield Local Environmental Plan 2013 (ALEP 2013) in pursuit of an enhanced planning outcome at the site.

## 2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the ALEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 enables a variation to the Floor Space Ratio standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard;
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives, which are:

1. to provide flexibility in the application of the relevant control; and
2. to achieve better outcomes for and from development.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**).

An additional principle was established in the decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal. A further recent judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

*"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."* [88]

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

Clause 4.6 of the ALEP reads as follows:

#### **Clause 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 Director-General has been obtained.*

(5) In deciding whether to grant concurrence, the Director-General must consider:

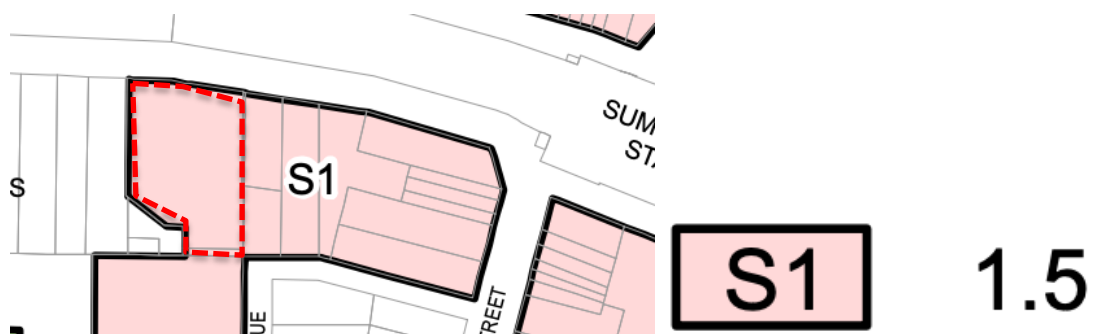
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(emphasis added)

### 3 The Development Standard to be varied

The development standard seeking to be varied is Clause 4.4 Floor Space Ratio (FSR) in the ALEP 2013. As identified on the ALEP 2013 Floor Space Ratio Map, the subject site has a maximum FSR of 1.5:1. Clause 4.4 states:

- (1) The objectives of this clause are as follows:
  - (a) to establish standards for development density and intensity of land use,
  - (b) to provide consistency in the bulk and scale of new development with existing development,
  - (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items,
  - (d) to protect the use or enjoyment of adjoining properties and the public domain,
  - (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.
- (2) The maximum floor space ratio for a building on any land is not to exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map.



**Figure 1** FSR LEP Map

Source: ALEP 2013 modified by Mecone

## 4 Extent of Variation to the Development Standard

The proposed development will vary the FSR control by 4%, proposing an overall FSR of 1.55:1. The minor variation to the FSR is a result of the establishment of a logical building envelope and the provision of additional communal and internal recreation areas beyond the minimums required under the relevant statutory controls. The building envelope has been established by aligning floors, wall heights and window repetition with the existing contributory building on the subject site.

Additional communal areas have been provided above what is required under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP). The proposal provides several areas that qualify as communal living areas, which are defined under the ARH SEPP as;

*"a room within a boarding house or on the site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreational room or games room".*

Regardless of the additional FSR proposed, the design has implemented elements that advance sustainable practices and consequentially minimise the GFA and the pressure on infrastructure services. These aspects include;

- **Creation of a large internal courtyard area.**

The internal courtyard occupies over 580m<sup>2</sup>, which is complimented by (approx.) 75m<sup>2</sup> open terrace at the southern end equating to over 22% of the site area. The lack of need for basement car parking creates deep soil plantings that break up the building mass and soften the site's built form. Creation of internal voids and glazing at the Carlton Crescent street frontage allows pedestrians to see through to the courtyard area, which minimises the bulk of the building when being viewed from pedestrians along Carlton Crescent (see **Figure 2**).



**Figure 2** Snapshot of perspective view through building into internal courtyard from Carlton Crescent

Source: Bates Smart Modified by Mecone

Fencing the rear terrace rather than enclosing it provides benefits such as activating the rear lane and providing passive surveillance. Similar to the glazing at the Carlton Crescent frontage, providing a visually permeable link through the rear terrace allows the internal courtyard and green screen plantings to be viewed from the public domain – mitigating building bulk.

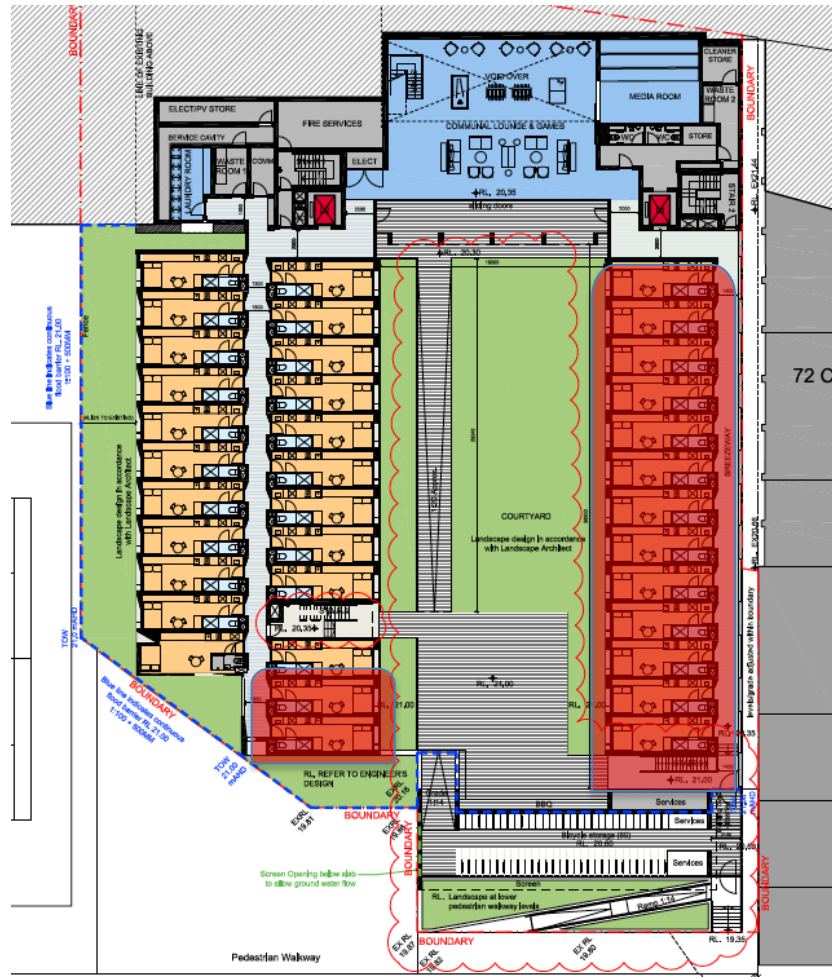
- **Promotion of single loaded, green corridors.**

Unlike many other similar developments, the proposal has actively promoted single loaded corridors where possible (see **Figures 4-7**). The opportunity this presents is the ability to naturally cross ventilate rooms by keeping the corridors open. High-level operable windows are provided above the doors to the rooms on single loaded corridors, which affords future occupants the ability to have openings on both sides of the building.

The corridors that are single loaded are open; however the use of vertical plantings are provided as a type of screen (see **Figure 3**).

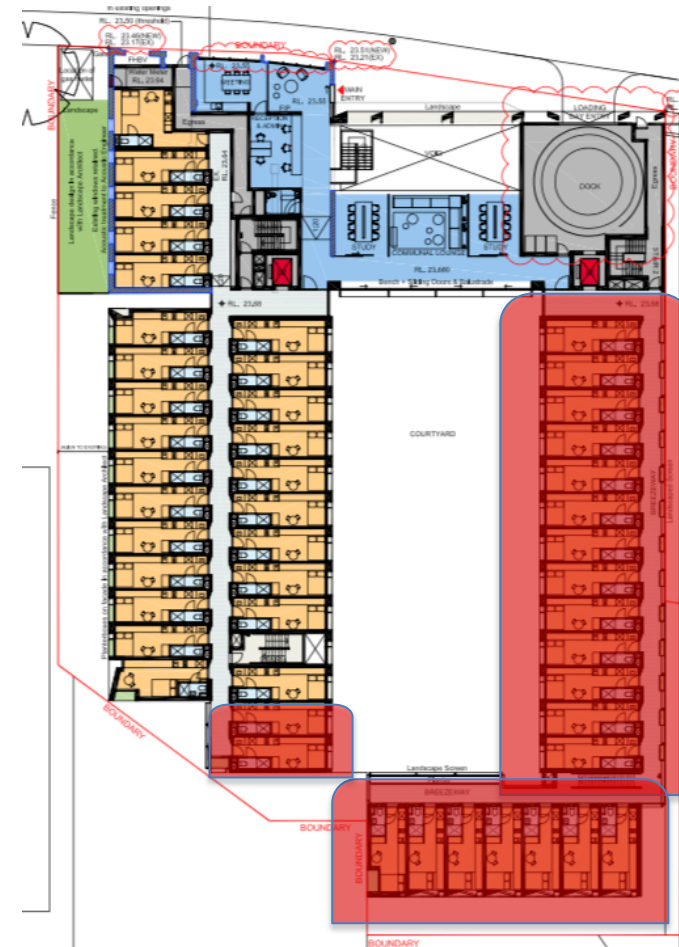


**Figure 3** Examples of green open corridors  
*Source: Bates Smart*



**Figure 4** Single loaded typologies lower ground level

Source: Bates Smart modified by Mecone



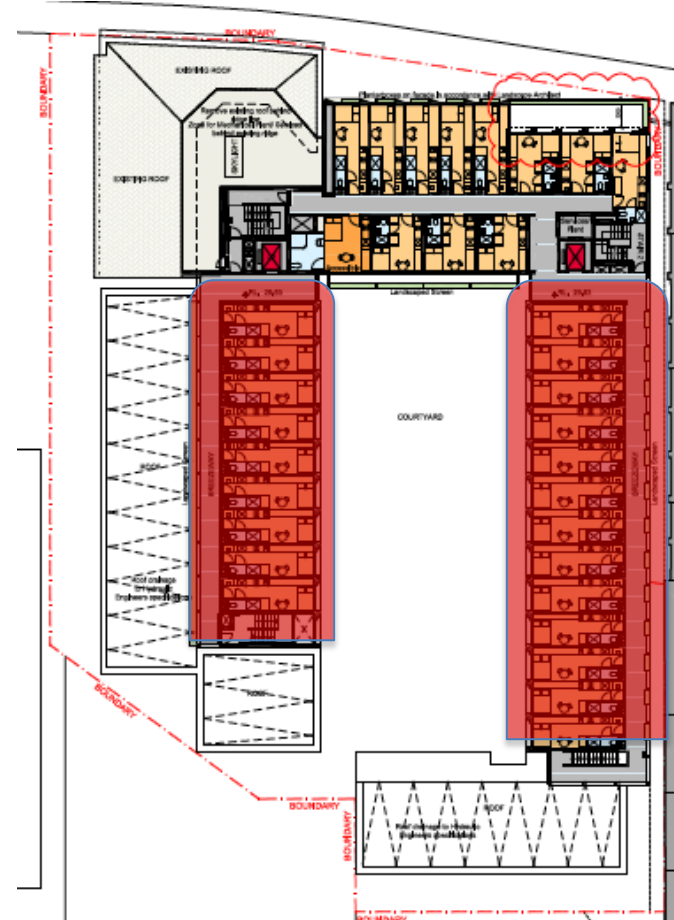
**Figure 5** Single loaded typologies ground level

Source: Bates Smart modified by Mecone



**Figure 6** Single loaded typologies Level 1

Source: Bates Smart modified by Mecone



**Figure 7** Single loaded typologies Level 2

Source: Bates Smart modified by Mecone

## 5 Objectives of the Standard

(1) The objectives of this clause are as follows:

- a) *To establish standards for development density and intensity of land use,*
- b) *To provide consistency in the bulk and scale of new development with existing development,*
- c) *To protect the use or enjoyment of adjoining properties and the public domain,*
- d) *To maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing, and are not likely to undergo, a substantial transformation.*

## 6 Objectives of the Zone

The objectives of the B2 Local Centre zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;*
- *To encourage employment opportunities in accessible locations;*
- *To maximise public transport patronage and encourage walking and cycling;*
- *To encourage residential accommodation as a part of mixed use development.*

## 7 Assessment

Where Clause 4.6(2) permits a consent authority to grant development consent for a development even though that development would contravene a development standard, the consent authority can only grant approval if the applicant has adequately demonstrated satisfaction of the matters in Clause 4.6(3) and the pre-conditions in Clause 4.6(4) have been satisfied.

### **Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case**

Compliance with the FSR control is unreasonable and unnecessary given the following circumstances of this case:

- As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary. *Wehbe* Test 1, as described in *Williams*, are relevant for the subject site:
  - *Wehbe* Test 1 - the objectives of the standard are achieved notwithstanding non-compliance with the standard;

### *Objectives of the FSR Control*

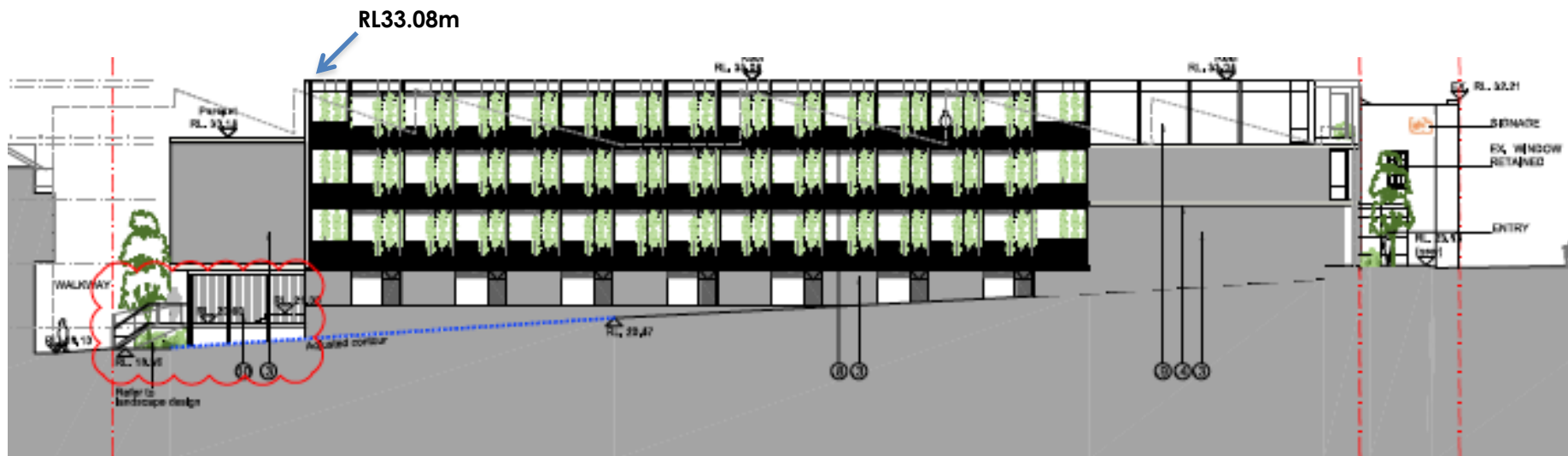
- *Objective (a) to establish standards for development density and intensity of land use.*

- The proposed development represents a minor departure of 4% from the development standard. The additional GFA does not equate to additional intensity of the use on the site. Under Clause 40 of the *State Environmental Planning Proposal (Affordable Rental Housing) 2009* (ARH SEPP) the development is only required to provide 1 x communal living room. A communal living room is defined as "a room within a boarding house or on the site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreational room or games room".

However the Applicant recognises the benefit to providing multiple internal communal spaces for students. These spaces are located at the lower ground floor and the ground floor of the proposal. Compliance with the FSR control would result in a reduction in the additional communal living room area that is afforded to the future occupants, not the number of rooms.

- *Objective (b) To provide consistency in the bulk and scale of new development with existing development.*

- The proposed building envelope has been designed to correspond with the surrounding context. This has been achieved by;
  - Utilising existing levels and features on the Western Districts Ambulance building including:
    - Providing a 3-storey elevation addressing Carlton Crescent, the adjoining park and the rear boundary, with the height of the elevation referenced off the existing eaves of the Western District Ambulance Building;
    - Provision of a fourth storey addressing the adjoining park, which is setback from the park and located under the ridgeline of the Western District Ambulance Building; and,
    - Taking the proposed height on the eastern elevation from the height of the adjoining building.
    - (see **Figures 8 – 12**)



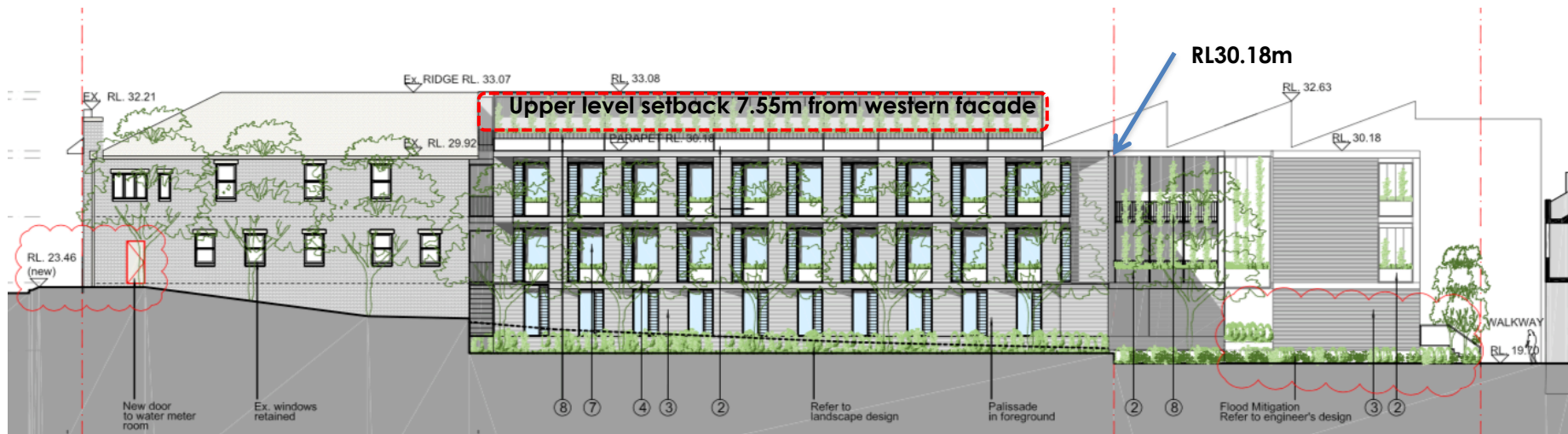
**Figure 8** Snapshot of Eastern Elevation

Source: Bates Smart



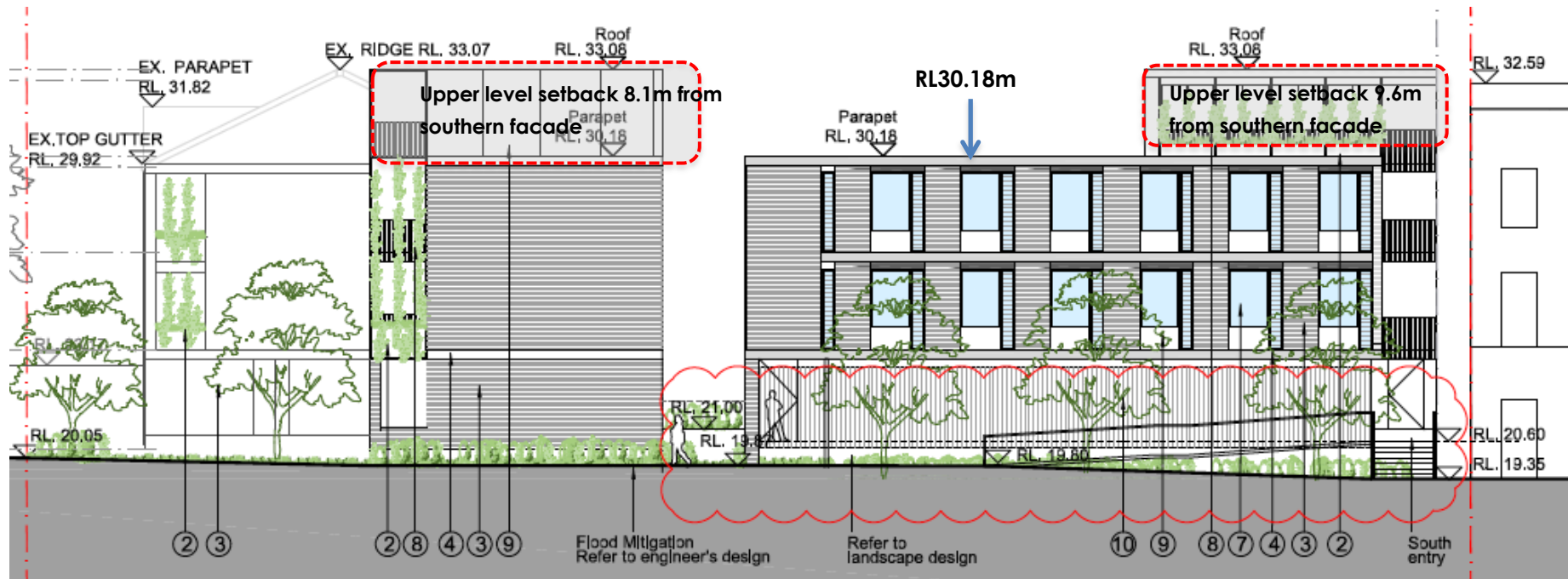
**Figure 9** Snapshot of Carlton Crescent Elevation

Source: Bates Smart



**Figure 10** Snapshot of Darrell Jackson Gardens/Summer Hill Skate Park elevation

Source: Bates Smart as amended by Mecone



**Figure 11** Snapshot southern elevation

Source: Bates Smart as amended by Mecone



**Figure 12** Snapshot of photomontage of view from Darrell Jackson Gardens/Summer Hill Skate Park elevation

Source: Bates Smart as amended by Mecone

- *Objective (c) to minimise adverse environmental impacts on heritage conservation areas and heritage items.*
  - The density of the development does not provide any adverse impact on the conservation area and associated heritage items and identified contributory buildings.
  - The proposed development is located within the Summer Hill Central Heritage Conservation Area, with the Heritage Impact Statement prepared by Weir Phillips noting the Western Districts Ambulance Building's Carlton Crescent Façade as being identified as a Contributory Building 1 within the ADCP 2016. The proposed development retains the front and side elevations beneath the original roof form of the original building, whilst demolishing the later additions to the east and south. Weir Phillips note that the proposed portion of the building fronting Carlton Crescent is of a similar massing and scale to the building that it replaces. The increase in massing and scale proposed to the rear of the Carlton Crescent frontage will not be read from Carlton Crescent.
  - The increase in massing and scale of the built form on the site as viewed from the south and west proposes an acceptable impact because no significant view corridors into the conservation area will be blocked. The setback of the new building from the western boundary matches the setback of the original building in this location.
  - The form of the new building has been carefully considered. The form is simply complimenting the general parapet forms of the light industrial buildings
  - Weir Phillips also note that the proposal has no adverse impact on the ability to read the historic significance of the adjoining Darrell Jackson Gardens.
- *Objective (d) to protect the use and enjoyment of adjoining properties and the public domain.*
  - In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 it was determined that a development does not have to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. In accordance with Objective (d) above, the proposed development protects the enjoyment of the adjoining properties and the public domain.
  - The proposed development does not restrict the enjoyment of solar access to adjoining land uses:
  - The view from the sun diagrams prepared by Bates Smart show that the proposed development ensures no overshadowing from the proposed development occurs from 11am onward during midwinter. Before 11am only a small section of the skate park and tennis court is in shadow.

- All buildings that directly adjoin the subject site are commercial or industrial in nature. Despite this, the proposal ensures that by reducing the height of the building at the rear of the site, the design ensures that there is still satisfactory solar access afforded to buildings located south of the subject site. The existing building to the south of the subject site is the “Supa IGA” supermarket. The height of the north facing parapet of the supermarket is RL22.72m on the Survey Plan, with the southern façade of the building being RL30.08m – compliant with the 10m building control. The proposed development will only overshadow a small portion of the (approximately) 60m long northern elevation of the building to the south of the subject site during mid winter. The fact that the use to the south of the subject site is a supermarket and that only a small portion of the large elevation (which has no window openings) is overshadowed from the proposal is considered satisfactory.
- The proposed development actively encourages alternative forms of transport. No private vehicle parking is provided on the site. Therefore the proposed use does not contribute to traffic congestion or traffic noise.
- *Objective (e) to maintain an appropriate visual relationship between new development and the existing character of areas that are not undergoing and are not likely to undergo, a substantial transformation.*
  - The proposed development is of an appropriate height, bulk and scale, and is compatible with the surrounds. The Heritage Impact Statement prepared by Weir Phillips outlines that the proposed development maintains a suitable character when considered in the context of the Summer Hill Central Heritage Conservation Area on account of:
    - The proposed building maintains the existing scale of development along Carlton Crescent;
    - A positive relationship is established between the existing Western Districts Ambulance Building and the proposed additional building/s.
    - No prominent views are interrupted as a result of the proposed buildings; and
    - The proposal does not impact on the understanding of the heritage value of the adjoining Darrell Jackson Gardens and the use of landscaping on the western side is complimentary to the parkland.

**Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

As discussed above, Pain J held in *Four2Five v Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Pain J also held that in order for a clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed. On appeal, Leeming JA in *Four2Five v Ashfield Council* [2015] NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead re-stating Pain J and saying:

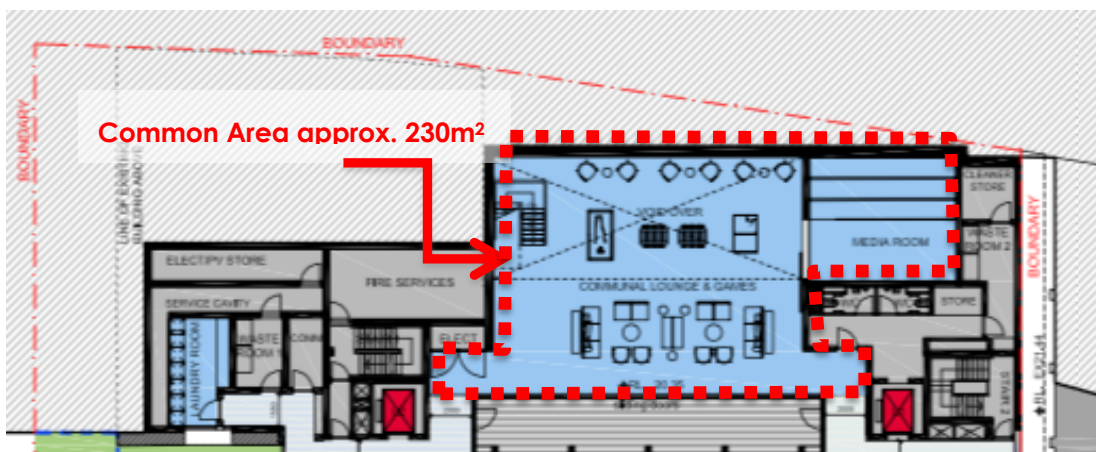
*"matters of consistency with objectives of development standards remain relevant, but not exclusively so."*

Further recent findings by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 also found that:

*"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."* [88]

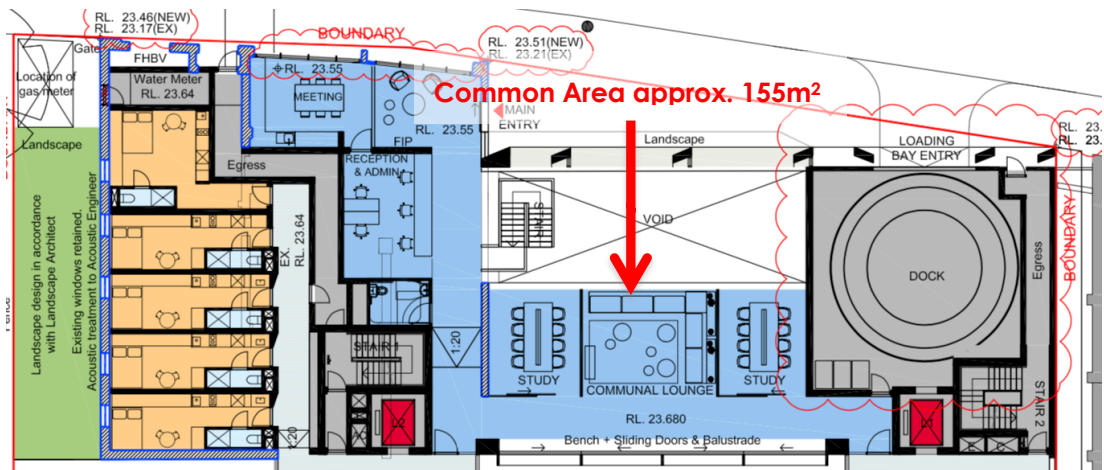
There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development allows for the promotion and co-ordination of the orderly and economic use and development of the land in the following ways:

- The additional FSR generated is a result of the provision of additional common areas, which will reduce the overall impact of the developments on surrounding social infrastructure. The common spaces provide places for study as well as socialising and gathering. Providing significant communal spaces on the site for these activities to take place limits the reliance on public spaces to provide this service. Actively reducing the GFA of the proposal would result in the reduction of the additional communal areas to one space (as required under the ARH SEPP) and not rooms. The reduction of the GFA would result in additional pressure on public spaces to provide space for the occupants to congregate, study and socialise.



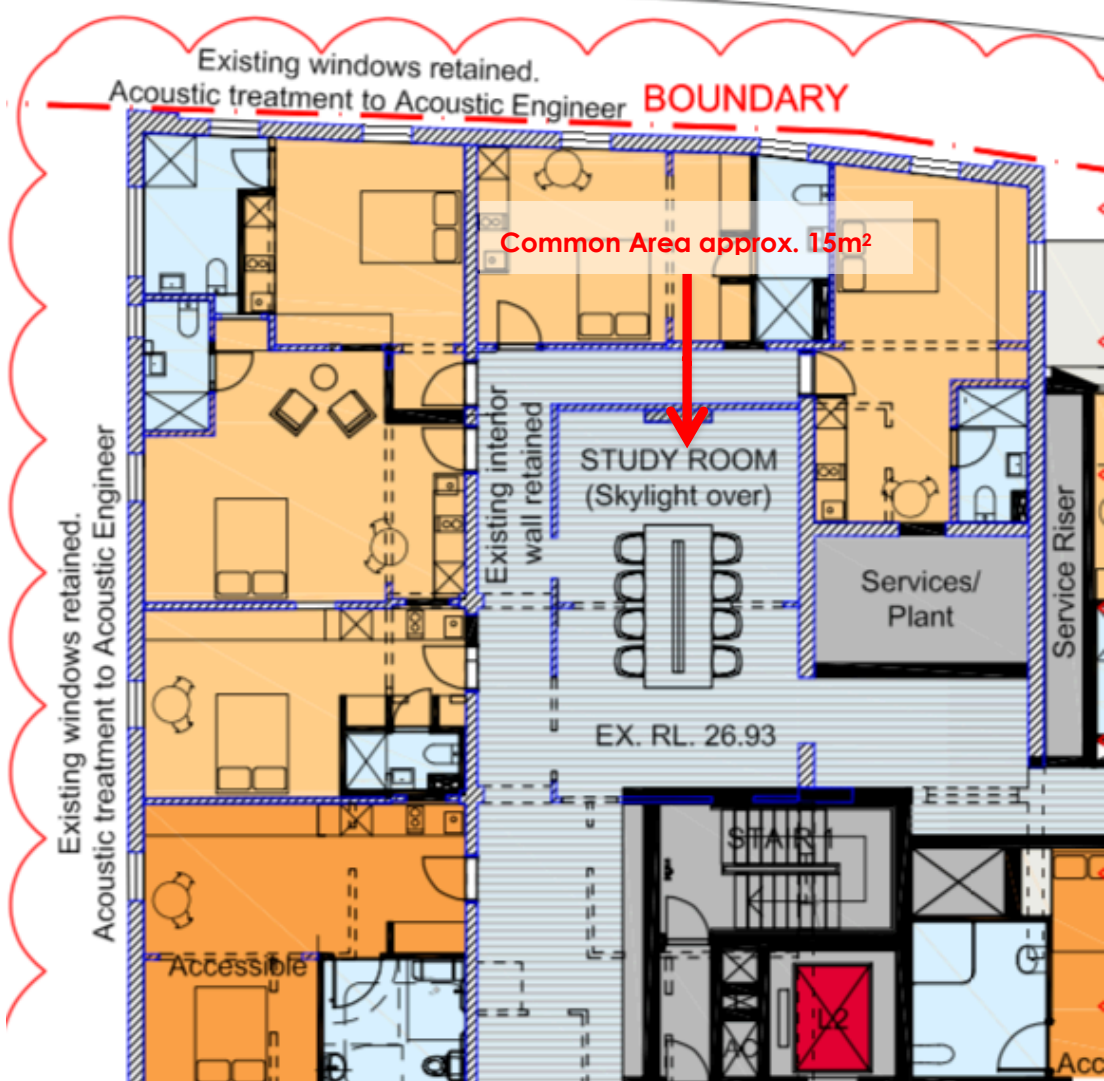
**Figure 13** Snapshot of lower ground floor common areas.

Source: Bates Smart as amended by Mecone



**Figure 14** Snapshot of ground floor common areas.

Source: Bates Smart as amended by Mecone



**Figure 15** Snapshot of level 1 common areas

Source: Bates Smart as amended by Mecone

- The proposed development includes the provision of significant environmental features that reduce the reliance on existing services. These initiatives include;
  - Load reduction by minimising the need for energy and water consumption through promoting elements of passive building design and maximising natural ventilation and solar access.
  - Optimising energy and water consumption through implementing efficient lighting and water systems as well as appliances.
  - Use of renewable resources by delivering roof mounted solar PV systems and rainwater harvesting. The proposed integration of PV systems in the development will alone reduce the greenhouse gas emissions from the development by 138 tonnes.
  - Sustainable travel options have been prioritised over the use of motor vehicles, which has a positive economic impact on the local area as well as reducing the traffic and environmental impacts of the proposal. The development is situated in the Summer Hill Local Centre and is accessible to a number of local shops and services within 200m of the site (including a local supermarket).
  - Students will also have access to the Summer Hill Train Station (150m) and use of the bicycle facilities provided by the development to access services further afar. In the extraordinary situation where a student will require use of a private vehicle the use of taxi, Uber or car share (eg GoGet) is advocated.
  - The sites for Iglu's purpose-built facilities are chosen for their accessible locations, that allow students to move about the local area on foot or bicycle and able to utilise public transport to travel further afield. Furthermore, staff are actively encouraged to utilise public transport options that are available to all Iglu developments. Iglu currently successfully operates 8 facilities in Sydney, Melbourne and Brisbane, none of which provide any car parking for students or staff. The proposal therefore provides little to no traffic generation.
- The Aim of the ARH SEPP includes to "facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards". The ARH SEPP advances this Aim by providing FSR incentives for boarding houses, where more attractive and lucrative land uses are permissible (i.e. residential flat buildings). This incentive includes an additional 0.5:1 FSR on sites with an existing maximum floor space ratio of 2.5:1 or less. This implies that there is a greater public benefit for providing boarding houses to diversify the housing typology in an area where residential flat buildings are permissible.

In the case of the subject site residential flat buildings are not permissible (and therefore in accordance with Clause 29 of the ARH SEPP the 0.5:1 bonus FSR does not apply), however the dwelling typology can still be delivered on the site through "shop top housing" land use. Shop top housing facilitates the ability to

deliver an apartment style dwelling typology (as could be established within a residential flat building) on the site, albeit above a commercial use.

The ARH SEPP clearly demonstrates that boarding house style development provides a public benefit by diversifying the housing product in locations where more attractive and lucrative dwelling typologies are permitted. The proposal seeks a variation to the FSR control of 0.03:1 to facilitate the establishment of a boarding house style development in the form of student accommodation, in a location where apartment style dwelling typologies are permitted (in the form of shop top housing). The proposed development will diversify the housing product in the location and will provide less of an impact on the surrounding services.

**4.6 (4)(a)(i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates;

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance (Wehbe Test 1).
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have been demonstrated.

**Clause 4.6(4)(a)(ii) - Is the proposed development 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?**

The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:

*The objectives of the particular standard*

It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.4 Floor Space Ratio within the ALEP 2013 notwithstanding the non-compliance with the standard.

*The objectives for development within the zone in which the development is proposed to be carried out.*

The site falls within the B2 Local Centre zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the B2 Local Centre zone as demonstrated below;

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposed development will include student accommodation within walking distance of the Summer Hill Local Centre and Summer Hill train station. The future occupants will be patrons of and potentially work in the local centre, strengthening the local economy. The minor departure from the FSR control does not compromise the achievement of this objective.

- *To encourage employment opportunities in accessible locations.*

The proposed development includes only student accommodation and no other uses however, there will be full-time and part-time staff employed to manage the building, and the student residents will be within walking distance to employment opportunities in the Summer Hill Local Centre and nearby Ashfield Town Centre. Furthermore, the proposal perpetuates the growth of the Inner West as an innovative and creative hub of the Greater Sydney Region. The proposal includes innovation reuse and design, which involves sustainable building and green technologies. The ambition is to not only create a facility that attracts innovative thinkers and students to the locality but will facilitate interaction and growth in innovative industries and best practice sustainable development in the Inner West.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposed development will be located in an accessible location which is in proximity to Summer Hill train station and a number of bus services which will maximise public transport patronage. Furthermore, the proposal incorporates bicycle parking and is surrounded by a series of footpaths which will encourage walking and cycling. The absence of car parking in the development will maximise public transport patronage and encourage walking and cycling through bicycle parking numbers above the minimum requirements.

- *To encourage residential accommodation as part of mixed-use development.*
- The proposed development includes a use that is permitted with consent in the zone, which will contribute to the diversity of residential uses in the surrounding locality. Furthermore the proposed development will support the continued operation and future growth of businesses within the B2 Local Centre zone. The proposal introduces a new, permitted use into the Summer Hill urban village, which will contribute to the continued operation and development of the surrounding diverse uses.

Taking into consideration the above the proposed development serves the public interest, as it is consistent with the objectives of the development standard and the B2 Local Centre zone.

Furthermore, there is no significant benefit in enforcing strict compliance given the circumstances of the case. The proposed Floor Space Ratio exceedance facilitates a significantly better planning outcome with improved built form and amenity able to be realised at the site as a result of the non-compliance. The contravention results in no significant adverse environmental impacts but rather a better planning outcome.

## 8 Any matters of significance for State or regional environmental planning

The development provides an opportunity for an appropriate planning response which aligns with the actions in place for the Inner West within the Eastern District Plan. The proposed development will add to the diversity of uses provided within Summer Hill and reinforce the role of the Local Centre. The contravention with the Floor Space Ratio Development Standard does not raise any matter of State or regional planning significance.

## 9 Conclusion to variation to Floor Space Ratio standard

This is a written request for an exception to the Floor Space Ratio under Clause 4.6 of the ALEP 2013. It justifies the contravention to the Floor Space Ratio under Clause 4.4 of the ALEP 2013, and in particular demonstrates that the proposal provides a significantly better planning outcome, with no significant adverse environmental impacts resulting, and therefore in the circumstances of the case:

- Full compliance with the 1.5:1 building FSR control is unreasonable and unnecessary;
- The proposed development has been demonstrated not to have adverse environmental impacts on surrounding development and is supportable on environmental planning grounds.
- It is in the public interest in being consistent with the objectives of the standard and the objectives of the zone;
- The proposed exceedance of the Floor Space Ratio standard will result in an enhanced planning outcome at the site; and
- The proposed development can demonstrate consistency with actions outlined in the Eastern City District Plan for the Inner West.