

# GYDE

## Clause 4.6 Variation Request (FSR)

3x Residential Flat Buildings

5 Halifax Street, Macquarie Park (Lot 110 DP 1224238)

submitted to the City of Ryde Council  
on behalf of Lachlan's Line D1 Pty Ltd

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## 1. INTRODUCTION

This request has been prepared in accordance with Clause 4.6 of the Ryde Local Environmental Plan 2014 (RLEP 2014). The purpose of the request is to justify a variation to the maximum Floor Space Ratio (cl 4.4) development standard as part of a Development Application (DA) submitted to the City of Ryde Council (Council).

The DA is for three residential flat buildings and relates to land known as 5 Halifax Street, Macquarie Park (legally described as Lot 110 DP 1224238). The site comprises a single, regular shaped allotment with a total area of 6,397sqm.

While the RLEP 2014 identifies three FSR controls for the site (1.39:1, 3:1 and 3.5:1), there is an existing Concept SSD consent (SSD 5093) that applies to the land, and in accordance with Section 4.24(4) of the EP&A Act, a consent authority must determine subsequent DAs submitted under Section 4.22(4)(a) consistently with the approved staged consent.

**Accordingly, the GFA allocation under SSD 5093 is the applicable GFA control for the subject proposal. The total GFA approved under SSD 5093 for Lot 110 (the subject site) is 25,626sqm. The DA, which has a maximum GFA of 25,620sqm (equating to an FSR of 4:1), complies with this control.**

Notwithstanding, this Clause 4.6 variation request has been prepared 'without prejudice' and in respect of the Ryde LEP FSR controls.



Figure 1: Site Location Plan

## 2. EXECUTIVE SUMMARY

This request has been prepared in accordance with Clause 4.6 of the Ryde Local Environmental Plan 2014 (RLEP 2014). The purpose of the request is to justify a variation to the maximum Floor Space Ratio (cl 4.4) development standard as part of a Development Application (DA) submitted to the City of Ryde Council (Council).

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the circumstances of this DA.

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

Clause 4.6 requires that a consent authority be satisfied of the following three (3) matters before granting consent to a development that contravenes a development standard:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case [clause 4.6(3)(a)].
2. That the applicant has adequately demonstrated that there is sufficient environmental planning ground to justify contravening the development standard [clause 4.6(3)(b)], and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objective for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

The proposed development involves the construction of three high-quality residential flat buildings in accordance with the master planning principles established for the Lachlan's Line precinct within SSD 5093 and Council's Urban Design Guidelines. This request demonstrates that compliance with the RLEP 2014 FSR control is unreasonable and unnecessary in the circumstance of the case; and that the objectives of the FSR control and R4 (High Density Residential) zone are achieved notwithstanding the non-compliance.

The development is in the public interest as there are sufficient environmental planning ground to justify the variation:

- The reallocation of GFA into a tall, slender tower in the southern portion of the site maximises solar access to the centrally located communal open space and achieves a better relationship (in terms of building separation) with future towers on adjoining sites. A 'theoretically compliant' scheme which places shorter, squatter buildings in the northern portion of the site would not yield the same positive solar, visual privacy or urban design outcomes.
- The RLEP 2014 FSR control pre-dates the detailed concept massing and envelope testing undertaken as part of SSD 5093 (approved March 2015) and Council's Urban Design Guidelines (imminently awaiting endorsement). The principles of these documents have been carried forward to the DA scheme, which demonstrates that the residential flat buildings can be successfully sited and designed to achieve design excellence, deliver a high standard of residential amenity, and mitigate environmental impacts to the locality, including the development potential of adjoining sites.

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- As discussed elsewhere in this report, a Clause 4.6 variation to the RLEP 2014 FSR control has already been granted with SSD 5093, which sought to redistribute density away from the central portion of the Lachlan's Line precinct and towards the north-eastern corner. DPE found this built form approach to be acceptable and this DA is compliant with the GFA allocation under SSD 5093.
- In this sense, the proposal does not alter the built form character or design quality of the Lachlan's Line development as envisaged under SSD 5093 or Council's Urban Design Guidelines, noting the buildings comply with the RLEP 2014 Height of Buildings (HOB) control.
- The car parking allocation complies with the DCP rate. Therefore, no additional traffic impacts (beyond those anticipated by the existing planning framework) are caused by the proposal.

This request also addresses the requirements for concurrence of the Secretary by Clause 4.6(4)(b). It is therefore considered appropriate in this circumstance to vary the development standard.

### 3. BACKGROUND – CONCEPT SSD 5093

On 5 March 2015, Concept SSD consent was granted by DPE for the North Ryde Station Precinct (SSD 5093). Relevantly, this approval included the allocation of a maximum GFA to each development lot, totalling 238,919sqm across the site (and 25,626sqm for the subject site).

While the total amount of GFA approved under the Concept SSD is consistent with what could have been theoretically achieved under the Ryde LEP 2014, the floor space was reallocated to different parts of the site (concentrating mass away from the centre and towards the north-eastern corner).

This required a formal Clause 4.6 variation request, which DPE approved in granting consent to SSD 5093.

DPE stated in their assessment report that the variation to the Ryde LEP 2014 FSR control sought by SSD 5093 satisfied both the objectives of the zone and the FSR development standard as it:

- Allowed for effective control over the bulk of future development.
- Allowed for an appropriate level of development across the broader site, consistent with the overall development envisaged in the NRSP Finalisation Report, which informed the development standards, and with no change to land use mix.
- Did not impact the total infrastructure provision requirements, as the overall level of development on the site did not change.
- Remained consistent with planning objectives in that all areas of the site are within walking catchment of a train station.
- Did not impact the consolidation of development at railway station nodes, as the proposal did not seek to change floor space for development immediately adjoining North Ryde Station.
- Did not impact on the peripheral locations of the corridor, or corporate building settings; and
- Allowed for an improved layout to the site which reinforced the importance and function of the Central Spine through the provision of a linear park and provided and an improved street layout.

Accordingly, the Ryde LEP 2014 FSR control has already been varied by DPE in granting consent to SSD 5093. The applicable GFA control for the site is 25,626sqm (as approved under SSD 5093), which the proposal complies with.

## 4. STANDARD TO BE VARIED

*As discussed above, the GFA approved under SSD 5093 is the applicable GFA control for the subject proposal, which the proposal complies with. Notwithstanding, this Clause 4.6 variation request has been prepared 'without prejudice' and in respect of the Ryde LEP FSR controls.*

The standard proposed to be varied is the Floor Space Ratio (FSR) development standard which is set out in clause 4.4 of the *Ryde Local Environmental Plan 2014* (RLEP 2014) as follows:

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

The site has three maximum FSR controls of 1.39:1, 3:1 and 3.5:1, as shown in Figure 2 below.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

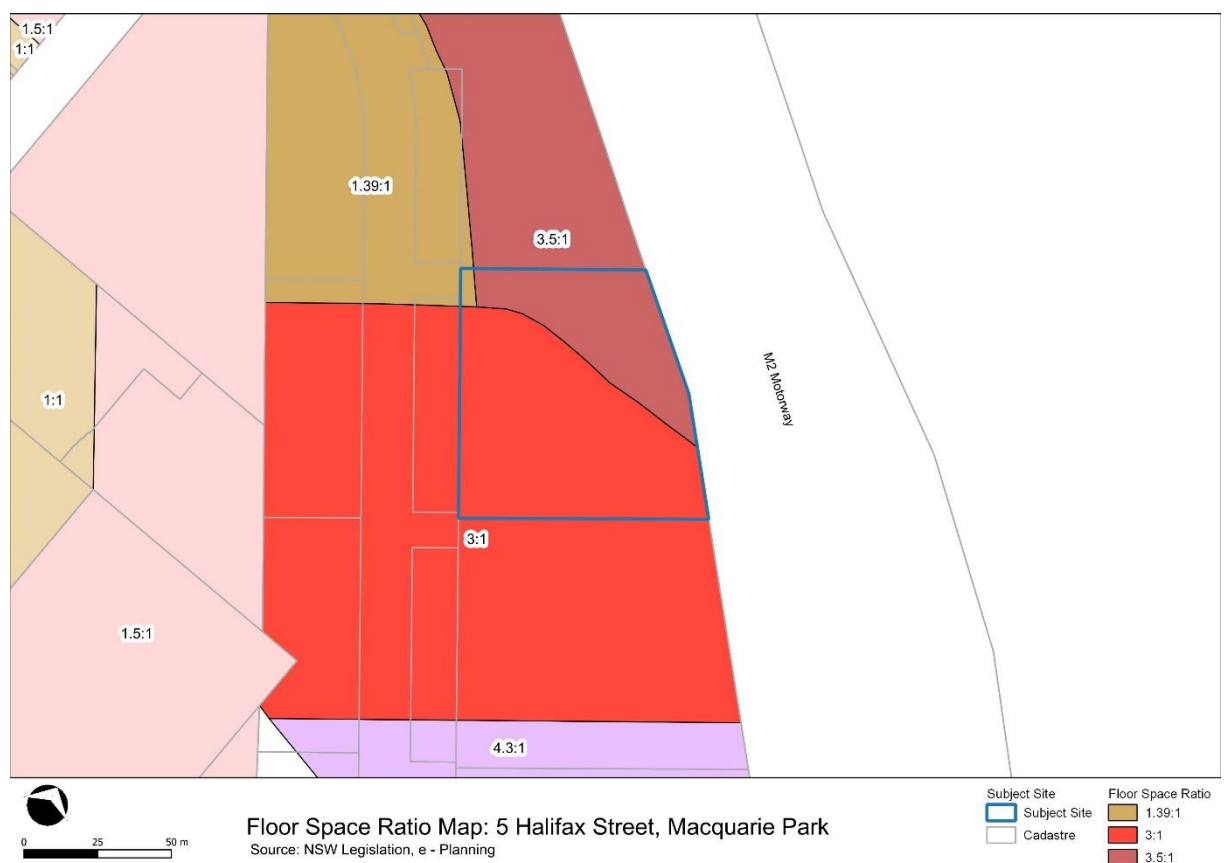


Figure 2: Ryde LEP 2014 FSR Map



## 5. EXTENT OF VARIATION

Pursuant to Clause 4.4 of the RLEP 2014, the site has three maximum FSR controls of 1.39:1, 3:1 and 3.5:1. The site has a total area of 6,397sqm. The proposed buildings have a total GFA of 25,620sqm, which equates to a total FSR of 4:1. On an individual basis, the DA does not comply with the RLEP 2014 FSR controls, nor would it comply on an overall basis. This is broken down in the Table below:

Table 1: Breakdown of FSR Controls

LEP CONTROL	PART LOT AREA	GFA ON PART LOT	FSR ON PART LOT
1.39:1	83sqm	21.4sqm	0.26:1 (complies)
3:1	4,375sqm	25,516sqm	5.8:1 (non-compliant)
3.5:1	1,937sqm	82sqm	0.04:1 (complies)
	<b>Total Site Area: 6,397sqm</b>	<b>Total GFA: 25,620sqm</b>	<b>Total FSR: 4:1</b>

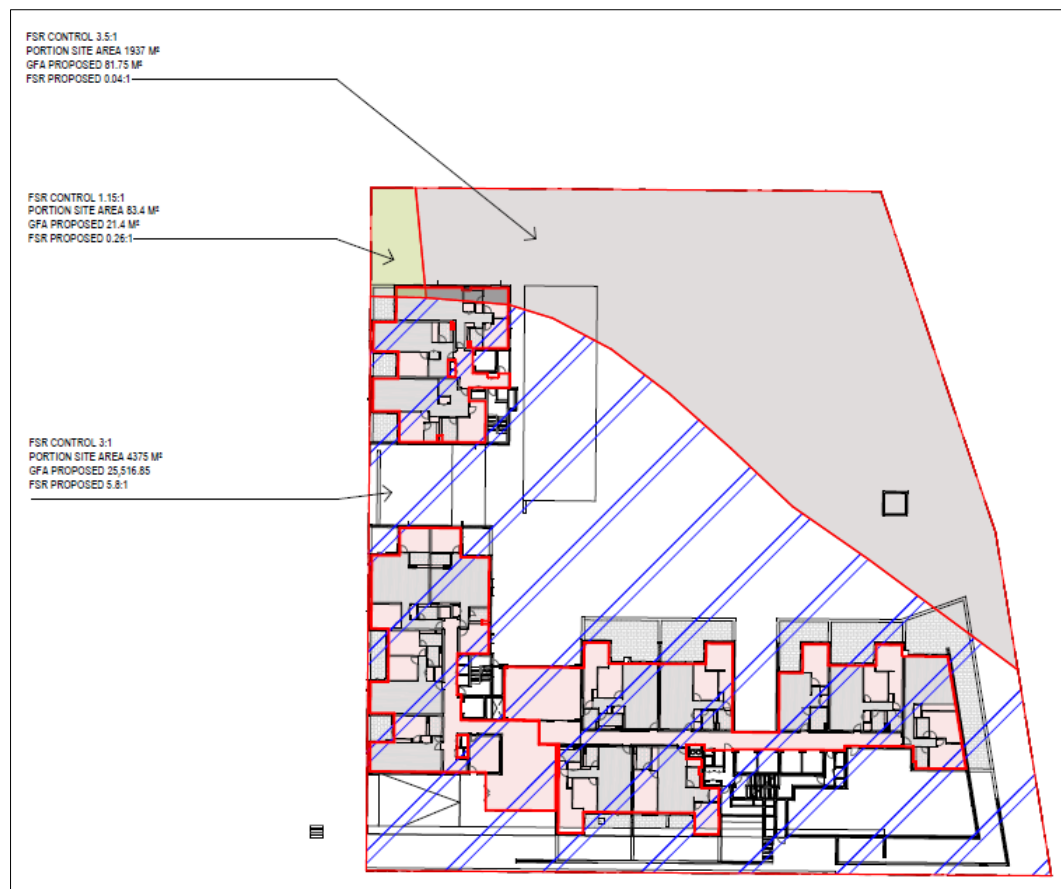


Figure 3: Ryde LEP 2014 FSR Map

## 6. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, as required by clause 4.6(3)(a) of the RLEP 2014.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

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

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a). Nonetheless, we have considered each of the ways as follows.

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

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

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Table 2: Consistency with Objectives of clause 4.4 of the RLEP 2014

OBJECTIVE	DISCUSSION
<b>4.4 Floor space ratio</b>	
(1) The objectives of this clause are as follows—	
(a) to provide effective control over the bulk of future development.	<ul style="list-style-type: none"> <li>The density, use and height of the proposal are consistent with what was anticipated under SSD 5093 and Council's Urban Design Guidelines (existing structure plans), which envisage a landmark tower building on the site's southern boundary and a lower scaled podium on the western edge facing Halifax Street. As discussed above, these documents also allocate a maximum GFA of 25,626sqm to the site, which the proposal complies with.</li> <li>Moreover, the proposed development, and in particular the additional GFA, does not contribute unreasonably to any building bulk impacts in terms of privacy, overshadowing or view loss; nor does it diminish the amenity or development potential of adjoining land.</li> </ul>
(b) to allow appropriate levels of development for specific areas.	<ul style="list-style-type: none"> <li>The site is uniquely positioned to deliver a mix of dwelling types in an accessible location that is zoned for (and suited to) high density residential use.</li> <li>The level of development proposed has been anticipated by DPE and Council in the site-specific planning framework that has been established and is considered warranted on the basis that: <ul style="list-style-type: none"> <li>The proposal will be compatible with the bulk and scale of the (future) adjacent development.</li> <li>The buildings achieve all relevant ADG criteria with regard to visual privacy and residential amenity (i.e., solar access, cross ventilation, apartment size etc).</li> <li>The additional floor space resulting from the reallocation of GFA into a tall, slender tower in the southern portion of the site maximises solar access to the centrally located communal open space and achieves a better relationship (in terms of building separation) with future towers on adjoining sites. A 'theoretically compliant' scheme which places shorter, squatter buildings in the northern portion of the site would not yield the same positive solar, visual privacy or urban design outcomes.</li> <li>The car parking allocation complies with the DCP rate. Therefore, no additional traffic impacts (beyond those anticipated by the existing planning framework) are caused by the proposal.</li> </ul> </li> </ul>
(c) in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.	<ul style="list-style-type: none"> <li>The Lachlan's Line Precinct is anticipated to provide up to 2,700 new dwellings, tied to Landcom's vision for a Transit Oriented Development in association with the Sydney Metro Northwest.</li> <li>Landcom and the NSW Government have invested significant resources in forward delivering several key pieces of public and social infrastructure in readiness for the development of the precinct.</li> <li>The DA seeks a development outcome that is wholly consistent with the parameters outlined within SSD 5093 and Council's Urban Design Guidelines, and will provide a sustainable, orderly, and economic use of the land.</li> </ul>

As demonstrated in the Table above, the objectives of the FSR development standard are achieved notwithstanding the variation. In accordance with the Wehbe, compliance with the development standard is therefore demonstrated to be unreasonable or unnecessary, and the requirements of clause 4.6(3)(a) have been met on this way alone.

- 6.2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary

The underlying objective or purpose is relevant to the development. This reason is not relied upon.

- 6.3. The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable

- 6.4. The objective would not be defeated or thwarted if compliance was required. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary

The RLEP 2014 FSR standard has not been abandoned by Council, so this reason is not relied upon, however it is noteworthy that the standard has effectively been made redundant by the SSD 5093 consent (in accordance with Section 4.24(4) of the EP&A Act).

- 6.5. The zoning of the land is unreasonable or inappropriate

The zoning of the land is reasonable and appropriate and therefore is not relied upon.

## 7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

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

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

As discussed in Section 3, the proposal contravenes the Floor Space Ratio development standard as a result of a 'technical' non-compliance, as the built form arrangement follows the parameters contained within SSD 5093 and Council's Urban Design Guidelines, which supersede the LEP control.

The environmental planning ground to justify the departure of the FSR standard are as follows:

- The reallocation of GFA into a tall, slender tower in the southern portion of the site maximises solar access to the centrally located communal open space and achieves a better relationship (in terms of building separation) with future towers on adjoining sites. A 'theoretically compliant' scheme which places shorter, squatter buildings in the northern portion of the site would not yield the same positive solar, visual privacy or urban design outcomes.
- The RLEP 2014 FSR control pre-dates the detailed concept massing and envelope testing undertaken as part of SSD 5093 (approved March 2015) and Council's Urban Design Guidelines (imminently awaiting endorsement). The principles of these documents have been carried forward to the DA scheme, which demonstrates that the residential flat buildings can be successfully sited and designed to achieve design excellence, deliver a high standard of residential amenity, and mitigate environmental impacts to the locality, including the development potential of adjoining sites.
- As discussed elsewhere in this report, a Clause 4.6 variation to the RLEP 2014 FSR control has already been granted with SSD 5093, which sought to redistribute density away from the central portion of the Lachlan's Line precinct and towards the north-eastern corner. DPE found this built form approach to be acceptable and this DA is compliant with the GFA allocation under SSD 5093.
- In this sense, the proposal does not alter the built form character or design quality of the Lachlan's Line development as envisaged under SSD 5093 or Council's Urban Design Guidelines, noting the buildings comply with the RLEP 2014 Height of Buildings (HOB) control.
- The car parking allocation complies with the DCP rate. Therefore, no additional traffic impacts (beyond those anticipated by the existing planning framework) are caused by the proposal.

## 8. PUBLIC INTEREST

The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the R4 (High Density Residential) zone. This is required by clause 4.6(4)(a)(ii) of the RLEP 2014.

An assessment against the objective of the R4 (High Density Residential) zone is provided in the Table below.

Table 3: R4 (High Density Residential) Zone Objectives

OBJECTIVE	DISCUSSION
<ul style="list-style-type: none"><li>To provide for the housing needs of the community within a high density residential environment.</li></ul>	<ul style="list-style-type: none"><li>The proposal, whilst maintaining the approved GFA on the site and being consistent with the concept approval, will provide a variety of apartments in the R4 (High Density Residential) zone, on accessible land that is suited to development of this nature. Strict compliance would significantly lessen the achievement of this objective.</li><li>All apartments are appropriately orientated and dimensioned to ensure high levels of residential amenity, compliant with the NSW ADG (i.e. solar, cross ventilation, apartment size).</li><li>The proposal forms part of the broader Lachlan's Line precinct, which includes other compatible land uses that provide facilities and services for residents. Strict compliance would lessen the achievement of land use integration between the proposed high density residential development and the mixed-use precinct developed in the southern portion of the Lachlan's Line precinct; and would similarly not maximise return on the NSW Government's investment in the Sydney Metro Northwest.</li></ul>
<ul style="list-style-type: none"><li>To provide a variety of housing types within a high density residential environment.</li></ul>	
<ul style="list-style-type: none"><li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li></ul>	

## **9. STATE OR REGIONAL ENVIRONMENTAL PLANNING**

The variation to the development standard does not raise any matters of significant for state or regional environmental planning. It is noted that Landcom has entered into Local and State Planning Agreements relating to the Lachlan's Line Precinct, however this DA does not seek to amend those Agreements (or parameters within).

## 10. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Ryde Local Environmental 2014*, to the FSR development standard and demonstrates that:

- Compliance with the development standard would be 'unreasonable and unnecessary' in the circumstances of this development.
- The development achieves the objectives of the development standard and is consistent with the objectives of the R4 (High Density Residential) zone.
- There are sufficient environmental planning grounds to justify the contravention.
- There is no public interest achieved in maintaining compliance with the development standard.

The consent authority can be satisfied of the above and is therefore in the public interest. The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003. On this basis, it is therefore appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of the case.