

# Clause 4.6 Variation Request

Clause 4.4 - Floor Space Ratio  
57-69 Strathallen Avenue, Northbridge

Submitted to Willoughby City Council  
on behalf of SJD NB Pty Ltd

29 October 2024

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# GYDE

## Acknowledgment of Country



**Towards Harmony by Aboriginal Artist Adam Laws**

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Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

### **This report was prepared by:**

Approver: Tina Christy  
Author: Camilla Firman (Senior Associate)  
Project: Clause 4.4 - Floor Space Ratio  
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**Updated to respond to Council's RFI dated 26 September 2024**

This report was reviewed by: Tina Christy

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## Glossary and Abbreviations

Term/Acronym	Description
AS	Australian Standards
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
CEMP	Construction Environmental Management Plan
Council	Willoughby City Council
CPTED	Crime Prevention through Environmental Design
DA	Development Application
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
The Regulations	<i>Environmental Planning and Assessment Regulations 2021</i>
ESD	Ecologically Sustainable Development
FSR	Floor Space Ratio
GFA	Gross Floor Area
INP	Industrial Noise Policy
LALC	Local Aboriginal Land Council
WLEP	<i>Willoughby Local Environmental Plan 2012</i>
LGA	Local Government Area
NCC	National Construction Code
SEPP	State Environmental Planning Policy
WDCP	<i>Willoughby Development Control Plan 2023</i>
WLEP	<i>Willoughby Local Environmental Plan 2012</i>
WSUD	Water Sensitive Urban Design



# 1. Introduction

This updated Clause 4.6 Variation Request relates to the Development Application (DA) for 57-69 Strathallen, Northbridge (site), which proposes a shop top housing development, and specifically to vary the development standard for maximum Floor Space Ratio (FSR) under Clause 4.4 of the *Willoughby Local Environmental Plan 2012* (WLEP).

The proposed works involve demolition of the existing structures on the sites and construction of a 5 storey shop-top housing development with 6 ground level retail tenancies and 24 residential apartments above, basement carparking, associated landscaping, infrastructure works and provisions for a future through site link connecting Strathallen Avenue to Sailors Bay Road\*.

*\* **Note:** Council acknowledged that this proposed development does not (and cannot as no owners' consent has been obtained) provide legal access through the northern portion (134 Sailors Bay Road, legally referred to as Lot A in DP404929). The development does not have owners' consent for 134 Sailors Bay Road and access over that site does not form part of this application. Any treatment of the future "through-site link" is proposed within the site boundary of 57-69 Strathallen Avenue only, and to clarify, this DA does not and cannot provide any physical link through to 134 Sailors Bay Road at present.*

This request should be read in conjunction with the documents submitted in support of the DA including the Statement of Environmental Effects, prepared by Gyde, (updated post lodgement dated 04 July 2024) and architectural drawings, prepared by Bates Smart (updated post lodgement dated 28 June 2024). These documents form part of the request.

The subject site to which the DA relates comprises 6 separate lots. The proposal includes the amalgamation of sites which currently have two different floor space provisions. Clause 4.4 of the WLEP prescribes a maximum FSR of 2:1 over 59-69 Strathallen Avenue and a maximum FSR of 2.5:1 over 57 Strathallen Avenue.

However, because of the way the site is calculated under Clause 4.5 of the WLEP, the proposed floor space is required to be calculated individually for each mapped FSR area. The result is that the proposed FSR on the 59-69 Strathallen Avenue (the larger site area) is below the maximum permissible (-90m<sup>2</sup> (0.05:1)) whilst the FSR on 57 Strathallen Avenue (smaller site area) marginally exceeds the maximum permissible (+46m<sup>2</sup> GFA (0.08:1)). This Clause 4.6 submission addresses this variation. A detailed analysis and arguments in favour of the requisite preconditions relevant to Clause 4.6 of the WLEP are contained within this Report.

The proposed development over all lots (57-69 Strathallen Avenue) have been designed as a single shop-top housing development and FSR distributed to ensure the development provides an overall total GFA less than the maximum permissible for all lots combined. The proposal seeks the reallocation or balancing of floor space throughout the amalgamated site to address the sloping topography of the site and minimise the extent of encroachment above the height plane to the north to minimise amenity impacts.

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying a certain development standard to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances. Further, the prescribed FSR under Clause 4.4 of the WLEP are 'development standards' to which exceptions can be granted pursuant to Clause 4.6 of the WLEP. The development standard to be varied is not excluded from the operation of Clause 4.6 of the WLEP as it does not comprise any of the matters under Clause 4.6(8) of the WLEP.

This Clause 4.6 Variation Request demonstrates that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context, whereas a fully compliant scheme would result in a built form inconsistent with the surrounding context.

This formal request has been prepared in accordance with Clause 4.6 of the WLEP and prepared having regard to the Department of Planning, Housing and Infrastructure's Guidelines to Varying Development Standards (November 2023) and various recent decision in the New South Wales (NSW) Land and Environmental Court (LEC) and the NSW Court of Appeals (Appeals Court).

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the FSR development standard, the requirement to comply is unreasonable and unnecessary in the circumstances as the proposed development:

- Is consistent with, and achieves the objectives of the development standard in Clause 4.3 of WLEP (Wehbe Test 1);
- Is consistent with the objectives of the E1 Local Centre zone under WLEP;
- Is consistent with the applicable and relevant state and regional planning policies;
- Provides a better planning outcome;
- Has sufficient environmental planning grounds to permit the variation; and
- The overall development will be compatible with the emerging higher-density character of the Northbridge Local Centre.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the WLEP.

Note: This report has been further updated to reflect the changes made to the proposed development during the response to the RFI issued by Council dated 26 September 2024. Any changes made to this updated report have been done so in blue text.

## 2. Standard to be Varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the maximum floor space ratio (FSR) development standard as set out in Clause 4.4 of the WLEP 2012. Clause 4.4 states:

**“Clause 4.4 Floor space ratio**

(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.”*

As identified on the WLEP 2012 Floor Space Ratio Map (see Figure 1 below), the site comprises 2 maximum FSR controls as follows:

Table 1. Breakdown of permissible and proposed FSR over subject site

Address	Legal reference	Site Area	Permissible FSR	Permissible GFA (based on site area)
57 Strathallen Avenue (corner site)	Lot 6, Section 3 in DP 7122	607m <sup>2</sup>	2.5:1	1,518m <sup>2</sup>
59-67 Strathallen Avenue	Lot 1 in DP 305190 Lot 4B in DP 305190 Lot 4A in DP 305190 Lot 5, Section 3 in DP 1722	1,821m <sup>2</sup>	2:1	3,642m <sup>2</sup>
69 Strathallen Avenue	Lot 1 in DP 726736			
<b>Total</b>		<b>2,428m<sup>2</sup></b>		<b>5,160m<sup>2</sup></b>

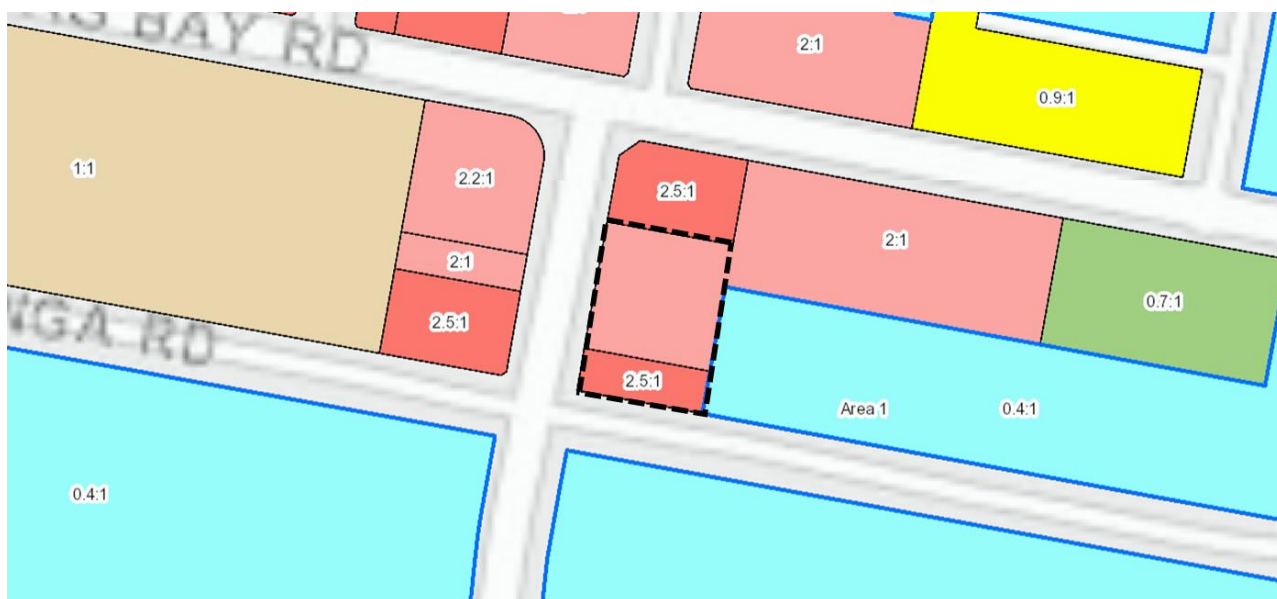


Figure 1. Floor Space Ratio (site outlined in black) (Source: WLEP: Floor Space Ratio Map)

The development standard to be varied is not excluded from the operation of Clause 4.6 of the WLEP.

### 3. Extent of Variation

The definition of FSR is established in Clause 4.5 'Calculation of floor space ratio and site area' of the 2012.

**Clause 4.5 Calculation of floor space ratio and site area**

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

In determining the site area of the proposed development for the purpose of applying the FSR, the site area is taken to be:

**(3) Site area** *In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—*

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or*
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out."*

The definition of gross floor area (GFA) is as follows:

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

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

The calculation of the GFA and associated FSR has been undertaken in accordance with these definitions.

The subject site to which the DA relates comprises 6 separate lots. As illustrated in Figure 1 (above) the subject site is affected by two maximum FSR development standards. Clause 4.4 of the WLEP prescribes a maximum FSR of 2:1 over 59-69 Strathallen Avenue and a maximum FSR of 2.5:1 over 57 Strathallen Avenue.



The proposed development over all lots (57-69 Strathallen Avenue) have been designed as a single shop-top housing development. Despite this, Clause 4.5 of the WLEP requires that FSR is required to be calculated individually each mapped FSR area.

The site has a total area of 2,428m<sup>2</sup>, and in accordance with Clause 4.5 of the WLEP, the building on the site has a total Gross Floor Area (GFA) of 5,116m<sup>2</sup>, the development as a whole has a proposed FSR of 2.11:1 over all lots.

**Table 2. Extent of variation proposed.**

Address	Site Area	Gross Floor Area		Floor Space Ratio		Variation	
		Permissible	Proposed	Permissible	Proposed	Numeric variation	%
<b>57 Strathallen Avenue</b> <u>Legal description:</u> <ul style="list-style-type: none"> <li>Lot 6, Section 3 in DP 7122</li> </ul>	607m <sup>2</sup>	1,518m <sup>2</sup>	1,564m <sup>2</sup>	2.5:1	2.58:1	<b>+46m<sup>2</sup> GFA (0.08:1)</b>	<b>2.99% more than permissible</b>
<b>Amended during RFI response</b>	-	-	1,559m <sup>2</sup>		2.57:1	<b>+41m<sup>2</sup> GFA (0.07:1)</b>	<b>2.70% more than permissible</b>
<b>59-69 Strathallen Avenue</b> <u>Legal description:</u> <ul style="list-style-type: none"> <li>Lot 1 in DP 305190</li> <li>Lot 4B in DP 305190</li> <li>Lot 4A in DP 305190</li> <li>Lot 5, Section 3 in DP 1722</li> <li>Lot 1 in DP 726736</li> </ul>	1,821m <sup>2</sup>	3,642m <sup>2</sup>	3,552m <sup>2</sup>	2:1	1.95:1	<b>-90m<sup>2</sup> (0.05:1)</b>	<b>2.5% less than permissible</b>
<b>Amended during RFI response</b>			3,545m <sup>2</sup>		1.95:1	<b>-97m GFA<sup>2</sup> (0.05:1)</b>	<b>2.67% less than permissible</b>
<b>Total</b>	<b>2,428m<sup>2</sup></b>	<b>5,160m<sup>2</sup></b>	<b>5,116m<sup>2</sup></b>	<b>2.13:1</b>	<b>2.11:1</b>	<b>-44m<sup>2</sup></b>	<b>0.85% less than permissible</b>
<b>Amended Total</b>	<b>2,428m<sup>2</sup></b> <i>Unchanged</i>	<b>5,160m<sup>2</sup></b> <i>Unchanged</i>	<b>5,104m<sup>2</sup></b>	<b>2.13:1</b> <i>Unchanged</i>	<b>2.10:1</b>	<b>-56m<sup>2</sup></b>	<b>1.09% less than permissible</b>

As indicated in Table 1 above, the proposal results in a variation to the overall maximum FSR that applies to the lot at 57 Strathallen Avenue. The lot marginally exceeds the maximum permissible FSR by  $41\text{m}^2$  GFA (0.07:1)) which represents a 2.70% variation.

However, the FSR on the 59-69 Strathallen Avenue is **below** the maximum permissible ( $-97\text{m}^2$  (0.05:1)).

The Applicant has made this Clause 4.6 request because it considers that the separate development of the lots, or the massing of a proposed building in strict compliance with the GFA maximums for each FSR zone, would be an inferior planning outcome to what is proposed.

The contravention of the standard(s) is a consequence of the technical application of Clause 4.4 and Clause 4.5 of the WLEP, and how site area and FSR of a development is calculated. While those technical rules generally play an important role in securing appropriate outcomes, technical compliance would lead to a suboptimal outcome in the circumstances of this case.

## 4. 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 WLEP2012.

The Court held that there are at least 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 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) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]).


Nonetheless, we have considered each of the ways as follows.

4.1 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*).

Table 3. Consistency with Objectives of the standard (Clause 4.3 Height of buildings)

Objective	Demonstration
<b>4.4 Floor Space Ratio</b>	
(1) The objectives of this clause are as follows –	
(a) <i>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,</i>	<p><u>Capacity of the land</u></p> <p>This Clause 4.6 Variation Request seeks the approval for an additional 46m2 over the maximum control permitted (2.5:1) permitted on the site at 57 Strathallen Avenue. The contravention to the standard is a consequence of how site area and FSR is calculated, boundary alignments, the sloping topography of the site and because the site is affected by two (2) different FSR provisions.</p> <p>The allowable GFA on the 6 lots combined is 5,160m<sup>2</sup> (see Table 1 above). The proposed GFA over all lots is 5,104m<sup>2</sup> and therefore quantum of floorspace proposed on the actual development site is 56m<sup>2</sup> less than the overall permissible GFA allowed achieving a total FSR of 2.10:1 when all the lots are considered in their entirety.</p> <p>Further, this variation is considered minor and manageable considering that the other lots to the north from 59-69 Strathallen Avenue provide a total GFA/FSR 97m<sup>2</sup> (0.05:1) <b>less than</b> the permissible maximum FSR of 2:1. When considered and balanced across the entire amalgamated site area, the proposed development is below the total maximum GFA permitted and considered appropriate by providing a scale of development (5 storeys) consistent with that prescribed by the Northbridge Local Centre provisions under the WDCP for the site.</p> <p>The scale and bulk of the built form is complementary to the neighbouring development (4-5 storeys) and consistent with the 5 storey building envelopes envisaged on the site. It has been designed to address the sloping site conditions and have regard to the major and minor street conditions and scale of neighbouring buildings, specifically 29A Baringa Road (a 5 storey shop-top housing development across Strathallen Avenue) and 54 Strathallen Avenue and 120A Strathallen Avenue (4 storey shop top housing developments). The proposal presents well-articulated facades to Strathallen Avenue and Baringa Road and reinforces the street wall heights established under the WDCP.</p>

Objective	Demonstration								
	<div></div> <p><b>Figure 2.</b> Extract of the indicative scale of growth for the Northbridge area set out in the WDCP(site outlined in red) (Source: WDCP)</p> <p><u>E1 Local Centre zone objectives</u></p> <p>The proposed development has been designed to align closely with the environmental capacity of the land under the WLEP and WDCP and the E1 Local Centre zone objectives. The approach aims to maintain a delicate balance between promoting development and safeguarding the natural and built environment. By limiting the intensity of development within these parameters, the proposal upholds the sustainability and long-term viability of the land while also fulfilling the intended objectives outlined for the specific zone. The distribution of the density within the overall site is appropriate for the scale of the local centre. The development has incorporated side and rear setbacks in accordance with SEPP (Housing) and the Apartment Design Guide and front and side setbacks according to the WDCP, to ensure the amenity of future occupants of the site and adjoining residents is maintained.</p> <p><b>Table 4. Assessment of Objectives of E1 Local Centre zone.</b></p> <table><tr><th>Objective</th><th>Assessment</th></tr><tr><td colspan="2"><b><u>Zone E1 Local Centre</u></b></td></tr><tr><td colspan="2"><b><u>1 Objectives of zone</u></b></td></tr><tr><td><i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</i></td><td><p>The proposed shop top housing development incorporates 6 retail tenancies at ground level with access directly off Strathallen Avenue with 24 residential apartments above.</p><p>These retail spaces are intentionally designed to accommodate a variety of purposes, spanning retail, business, and community services. For instance, there's provision of a kitchen riser in tenancy G.01 to enable a future tenant to propose a food and drink premise. It is noted however, that the fit out and use of the tenancy spaces does not form part of this DA and will be undertaken by future separate applications.</p><p>The ground level tenancies activate both Strathallen Avenue and Baringa Road, complying with the active</p></td></tr></table>	Objective	Assessment	<b><u>Zone E1 Local Centre</u></b>		<b><u>1 Objectives of zone</u></b>		<i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</i>	<p>The proposed shop top housing development incorporates 6 retail tenancies at ground level with access directly off Strathallen Avenue with 24 residential apartments above.</p> <p>These retail spaces are intentionally designed to accommodate a variety of purposes, spanning retail, business, and community services. For instance, there's provision of a kitchen riser in tenancy G.01 to enable a future tenant to propose a food and drink premise. It is noted however, that the fit out and use of the tenancy spaces does not form part of this DA and will be undertaken by future separate applications.</p> <p>The ground level tenancies activate both Strathallen Avenue and Baringa Road, complying with the active</p>
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Objective	Demonstration
	<p>street frontages under Clause 6.7 of the WLEP, and enhancing the future area's social fabric by providing a gathering place for residents, locals, and visitors. Further, the development includes a public landscaped courtyard, adding further value to the community by offering a shared outdoor space for relaxation and social interaction. Glazing is provided to the rear of Tenancy G.01 which enable views onto the landscaped open space area.</p> <p>This additional FSR sought through this request is essential for realising these objectives, as it enables the creation of a vibrant hub of retail activity as well as residential offering that fosters economic activity, social cohesion, and community engagement. It allows the amalgamated site to promote the orderly and economic use and development of the land by re-distributing the permissible floorspace over the site to limit detrimental impacts.</p> <p>By providing the opportunity of a range of retail, business, and community uses, the development can contribute to enriching the lives of those who live, work, or visit the area, contributing positively to the area, its overall vitality and well-being. It also provides a different yet complementary retail offering, with smaller tenancies directly accessible from the street, compared to that provided in the Northbridge Plaza.</p> <p><i>To encourage investment in local commercial development that generates employment opportunities and economic growth.</i></p> <p>As discussed above: The proposed shop-top housing development, providing a blend of both residential and commercial spaces, will generate employment opportunities both during construction and once operational. The development aims to foster a vibrant and self-sustaining urban environment whilst also creating synergies between residential living and local commerce. The integration of retail spaces on the ground floor provides employment opportunities directly within the community but also enhances the convenience for residents and stimulates economic activity within the Northbridge Local Centre. These retail tenancies will serve as incubators for local businesses, providing them with a platform to thrive and contribute and support the existing businesses and economic vitality of the area. The re-distribution of permissible floor space across the amalgamated site ensures the generation of employment opportunities and economic growth is achieved.</p> <p><i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.</i></p> <p>The proposed shop top housing development comprises 24 apartments, of 2,3 and 4 bedroom configurations. Despite the variation in FSR on one site, the development as a whole aligns with the broader goal of fostering a vibrant and active local centre while adhering to the strategic planning objectives outlined by Willoughby Council for residential development in the area.</p> <p>Of particular note is the following:</p> <ul style="list-style-type: none"> <li>Alignment with the <u>WDCP - Northbridge Local Centre</u> controls through: <ul style="list-style-type: none"> <li>Maintaining and increasing opportunities for active street frontages,</li> <li>Catering for potential opportunities for cafes and restaurants,</li> </ul> </li> </ul>



Objective	Demonstration
	<ul style="list-style-type: none"> <li>○ Incorporating high quality design elements on buildings on prominent corners sites to identify the gateways to the town centre,</li> <li>○ Provisioning for public open space and underground car parking,</li> <li>○ Inclusion of landscaping throughout all levels of the development and deep soil planting to support existing and additional mature trees,</li> <li>○ Accommodation of a pedestrian laneway link</li> <li>○ Provision of affordable housing consistent with WLEP, and</li> <li>○ Provision of streetscape improvements to Strathallen Avenue.</li> <li>• Alignment with <u>Willoughby Local Strategic Planning Statement</u> by: <ul style="list-style-type: none"> <li>• Providing a shop top housing development and density that is consistent with that envisaged under with Council's strategic planning goals and recently updated controls in the WLEP and WDCP.</li> <li>• Fostering sustainable urban growth whilst ensuring that the residential component contributes positively to the character and liability of the area.</li> <li>• Seek to address the identified lack of outdoor open space area for community recreation and gatherings, and community consultation through the provision of a landscaped courtyard at ground level.</li> <li>• Provides on-site basement carparking to assist in addressing the highlighted traffic and transport issues associated with the Council car park at the rear of Northbridge Plaza.</li> </ul> </li> <li>• Alignment with the <u>Willoughby Planning Strategy – Local Centres Strategy</u> through: <p><i>(Note: key elements have been captured within the updated WDCP 2023)</i></p> <ul style="list-style-type: none"> <li>○ Contribution to the 'emerging green lungs' and pocket parks/landscaped areas that provide relief from busy streets through provision of community landscaped area at ground level.</li> <li>○ Provision of tenancy spaces that can accommodate to outdoor dining and retail activity, in turn enhancing the vibrancy and life of the centre.</li> <li>○ Provision of a fine grain local retail and dining services and appropriate awnings,</li> <li>○ Provides directly for shop-top housing development within the centre,</li> <li>○ Encourages high quality architectural 'marker buildings' at key locations to provide gateways to the town centre,</li> <li>○ Realises the noted development potential for new medium density residential, new retail and community uses and additional mixed-use development.</li> </ul> </li> </ul>

Objective	Demonstration
	<ul style="list-style-type: none"> <li>Alignment with the <u>Willoughby Planning Strategy – Willoughby Housing Strategy</u> through:             <ul style="list-style-type: none"> <li>Consistency with the revised zoning and envelope controls applying to the height promoting increased density.</li> <li>Provision of additional housing, in 2, 3, and 4-bedroom configurations, as well as affordable housing consistent with the WLEP 2012.</li> </ul> </li> </ul> <p>Overall, the additional minor quantum of FSR sought on one of the allotments and the re-distribution of FSR over the whole site will enable the realisation of a development that can offer a unique opportunity to integrate residential living with commercial activity, thereby creating a lively and dynamic local centre. By incorporating retail spaces on the ground floor of residential complexes, the development aims to not only enhance the convenience for residents but also contribute to the overall vibrancy of the neighbourhood. The retail tenancies with large expanses of glazing and entries directly to Strathallen Avenue will provide activation, contribute to the vibrant and active local centre whilst also providing passive surveillance.</p>
<p><i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i></p>	<p>See response to Objective 1 above. The shop top housing development provides 6 retail tenancy spaces at the ground level, activating the street frontages to both Strathallen Avenue and Baringa Road, compliant with the active street frontages under Clause 6.7 of the WLEP. No residential uses are proposed at ground level per the requirement of the definition 'of shop top housing' (excluding residential lobby and mailboxes which are essential and required for access and essential servicing purposes).</p>  <p><b>Figure 3. CGI of proposed activation at ground level</b> (Source: Bates Smart, May 2024)</p>
<p><i>To provide for services and employment within walking distance of residences.</i></p>	<p>The proposed retail tenancies at ground level will provide opportunities additional community services and employment not only below the residential apartments proposed on site (above the retail component) but also other residential accommodation in proximity to the site.</p> <p>The land use zone within an approx. 500m radius from the E1 Local Centre zone primarily comprises residential zoning (R2 Low Density and R3 Medium Density) with pockets of public recreation areas (RE1 Public Recreation zone). The proposed development located in this E1 Local Centre zone is the only local centre that would service this wider residential area</p>


Objective	Demonstration
	<p>without them having to venture Crows Nest. The local centre would also service SP2 Education Establishment and local schools.</p> <p><i>To generally conserve and enhance the unique sense of place of local centres by ensuring new development—</i></p> <p><i>(a) displays architectural and urban design quality, and</i></p> <p><i>(b) integrates with the desired character and cultural heritage of local centres.</i></p> <p><u>Architectural and urban design quality</u></p> <p>The proposed 5 storey development has been designed to provide a built form outcome that sympathetically responds to the 4 to 5 storey built form relationship, setbacks and materiality seen in the surrounding locality whilst also realising the development potential on site is consistent with that envisaged under the WLEP and WDCP.</p> <p>The proposed design was referred to the Willoughby Design Excellence Review Panel on the 14 February 2024 which reviewed the proposal in the context of Clause 6.23 of the WLEP, as well as the Chapter 4 of SEPP(Housing) 'Design of residential apartment development'. The Panel commented that they are supportive of the design in principle subject to minor design changes which have been addressed as part of the submitted DA.</p> <p><u>Desired character and cultural heritage of local centres</u></p> <p>Part L, Chapter 10 outlines the current and desired future character of the Northbridge Local Centre. The character statement set out in the WDCP states:</p> <p><i>"Northbridge is at an entry point to the Willoughby local government area from the south. The business precinct is focused on a major arterial route along Sailors Bay Road, Eastern Valley Way and Strathallen Avenue.....</i></p> <p><i>The Northbridge local centre lacks any significant outdoor open space area for community recreation and gatherings....</i></p> <p><i>The topography of the centre is generally flat, with Sailors Bay Road running along the ridgeline. The built form character of the centre is generally a two to four storey street frontage. While the eastern side of the centre has a smaller lot pattern, the western side of the centre is characterised by larger lots and a bulkier built form. Some recent examples of shop top housing exist in the centre".</i></p> <p>The current character is described as an entry point to the Willoughby local government area from the south. The area currently lacks any significant outdoor open space area for community recreation and gatherings. The existing built form character of the centre is generally a two to four storey street frontage, however the area is currently undergoing change. While the eastern side of the centre has a smaller lot pattern, the western side of the centre is characterised by larger lots and a bulkier built form. Some recent examples of shop top housing exist in the centre of similar height and materials to the proposed.</p> <p>The proposed development aims to conserve and enhance the unique sense of place within Northbridge Local Centre. Particular emphasis has been placed to ensure this new development not only meets functional needs but also contributes positively to the architectural and cultural fabric of the area. Notably:</p> <ul style="list-style-type: none"> <li>• The proposed development provides a 5 storey built form structure consistent with the WDCP, with Level</li> </ul>

Objective	Demonstration
	<p>04 of the development set back and light aesthetic resulting in the built form appearing as only a 4 storey development from ground level.</p> <ul style="list-style-type: none"> <li>• These setbacks to the upper level also reduce the bulk and scale of the building as viewed from the street, curved edges, setbacks, landscaped balconies and planting zones address the lower density neighbours to the east.</li> <li>• The material palette references the neighbouring residential dwellings through the use of two different tones of brick. The lighter colour of the residential levels is sympathetic to the colour palette of the adjacent buildings to the north and south, whilst the warmer, darker colour of the podium grounds the building and references the traditional red brick and terracotta roofs of the nearby houses.</li> <li>• The upper level has a lighter appearance with glazing and darker metal framing. Roof terraces are fringed by landscape, benefitting the residents and visually softening the top level of the building.</li> <li>• Metal louvres are used on curves to provide visual privacy to balconies from adjacent apartments and neighbouring buildings.</li> </ul> <p>Overall, this approach not only enhances the aesthetic appeal of the local centre but also promotes a sense of cohesion and identity within the community.</p> <p>...</p> <p>The design, which respects and enhances the desired character and cultural heritage of the Northbridge local centre, through thoughtful design considerations such as architectural elements, continuation of awnings, materials, landscaping (including public central landscaped courtyard), provisions for a future through site link, activated ground plane, not only acknowledges but celebrates the unique historical and cultural elements of the area. In particular, the development achieves the desired future character as outlined in the WDCP as follows:</p> <ul style="list-style-type: none"> <li>• The development will act as a 'prominent marker' site for vehicles entering the suburb of Northbridge and the Willoughby LGA from the south via Strathallen Avenue.</li> <li>• The development retains fine grain retail tenancies at ground level on Strathallen Avenue, providing an extension to the fine grain built form along Sailors Bay Road.</li> <li>• The development maintains and increases opportunities for active street frontages with the integration of 6 retail tenancies, the tenancies, of which tenancy G.01 can accommodate a restaurant/bar/café (subject to future DA).</li> <li>• Integrates high quality design elements (high quality brick materials, articulated curved facades and edges and landscaping) on the prominent corner site.</li> <li>• Integrates public open space and landscaping. Landscaping and deep soil is provided at ground</li> </ul>

Objective	Demonstration
	<div data-bbox="544 293 799 533"></div> <p data-bbox="799 293 1434 405">level as well as to the facades on each level in the form of planter boxes to soften the development and provide additional privacy to and from the apartments.</p> <p data-bbox="799 405 1434 533">Overall, the development contributes positively to the sense of place within the Northbridge Local Centre community, enriching the overall experience for residents and visitors alike.</p> <p data-bbox="531 539 1434 640">The objective is achieved as the proposal re-distributes the permissible GFA across the whole site and provides a density appropriate for the scale of the centre, despite the minor exceedance of FSR on part of the site.</p>
<p data-bbox="169 651 501 741"><i>(b) to limit traffic generation as a result of that development,</i></p>	<p data-bbox="531 651 1434 775">The DA is accompanied by a Traffic Impact Assessment (TIA), prepared by MLA Transport Planning. Chapter 5 of the TIA examines the traffic generation of the proposed development and its impact against the traffic generation rates sourced from guidelines produced by TfNSW.</p> <p data-bbox="531 775 1434 965">The proposed ground level retail tenancies are small in scale and nature and are expected to service only the local area. They are expected to draw in their customers from walk in pedestrians in the immediate surrounding area. The TIA report comments that any development traffic arising from these uses would be predominantly related to shop owners and staff arriving and departing which would likely occur outside of the peak periods.</p> <p data-bbox="531 965 1434 1155">The TIA report details that the proposed development would generate 18 vehicles per hour and 14 vehicles per hour in the morning and evening peak periods respectively. The TIA concludes that this level of development traffic is low and is unlikely to create any noticeable traffic impacts especially considering that the development traffic would be diluted across the road network.</p> <p data-bbox="531 1155 1434 1413">The TIA goes on to state that the estimated development traffic arising from the proposed development represents approximately 2% of the peak hour traffic on Sailors Bay Road. The level of development traffic would be less than the daily variance in the background traffic the proposed development is not expected to create any noticeable changes to the local intersections. Finally, the local road network will continue to operate satisfactorily following the completion of the proposed development. The rates of parking for the residential component meets the DCP requirements.</p>
<p data-bbox="169 1424 501 1671"><i>(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i></p>	<p data-bbox="531 1424 1434 1581">The proposed development provides a high-quality built form consistent with the requirements of Chapter 4 of SEPP (Housing) 2021, the Apartment Design Guide and Council's DCP planning controls. It has also been designed to promote view sharing, minimise overshadowing and maximise privacy for adjacent properties as follows:</p> <p data-bbox="531 1581 647 1615"><u>View loss</u></p> <p data-bbox="531 1615 1434 1895">In determining if the view loss for the adjoining or nearby properties is reasonable or unreasonable, we have given consideration to <i>Tenacity Consulting v Warringah Council (2004) NSWLEC140</i> (Tenacity), whereby the Land and Environment Court established a set of Planning Principles on view sharing and what Councils should take into consideration in assessing view loss impacts. Those things that should be considered include an assessment of whether view impacts are negligible, minor, moderate, severe, or devastating. The Planning Principles involve a four-step process for considering the impact of a development on views. This involves:</p> <ol data-bbox="579 1895 1434 2040" style="list-style-type: none"> <li data-bbox="579 1895 1434 1962">1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.</li> <li data-bbox="579 1962 1434 2040">2. A consideration of how views are obtained and what part of the property the views are obtained from.</li> </ol>



Objective	Demonstration
	<ol style="list-style-type: none"> <li>3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe, or devastating.</li> <li>4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.</li> </ol> <p>The subject site is located within a street block that is bounded by Strathallen Avenue, Sailors Bay Road, Baringa Road, and Gunyah Street. The development in this street block is predominantly orientated to the front in response to the north-south subdivision pattern.</p> <p>The proposed design, including the FSR variation, represents an appropriate built form in terms of building alignment, modulation, and articulation. The built form is appropriate in that it is predominantly compliant with the height and FSR controls, is less than the total GFA permissible over all sites combined, is consistent with the existing 4-5 storey buildings in the Northbridge area, and the built form is envisaged by the controls in which this development is largely compliant with. The proposal will improve the streetscape, activation, and landscape quality of the area. The well-articulated facades to Strathallen Avenue and Baringa Road and reinforce the street wall heights and setbacks established under the WDCP.</p> <p>The proposed increase in density on the site/s and balancing of FSR over the two FSR zones does not overly impact any existing significant views or outlooks. Though the proposed built form is taller than that currently on site, it is in keeping with the other 4-5 storey shop top housing developments in close proximity to the site, complies with the anticipated 5 storey height under the WDCP provisions, integrates sympathetic materials, compliant setbacks, landscaping at both ground level in form of central courtyard and, visual separation and screening to the adjoining dwelling and neighbouring dwellings within the surrounding area through louvres, and landscaped planters on the façade elevations. The proposed development, in particular provides compliant setbacks to the eastern low density residential development and additional setbacks towards the north with inclusion of landscaped courtyard.</p> <p>It is noted that the adjoining development at 31 Baringa Road comprises no windows on its western elevation.</p> <p>The site that will be most impacted in terms of view loss will be the shop top housing developments at 29A Baringa Road and 54-56 Strathallen Avenue located on the western side of Strathallen. However, the proposed development does not impact the southern views that are maintained to surrounding developments along Baringa Road and located further south. The topography of the area, falling from north to south from Sailors Bay Road, allows a view of North Sydney in the background (refer to Figure 3 below).</p> <p>The current views are not considered to be significant views in the locality, are not iconic, and are largely distant background views of St. Leonards to the southwest and views to North Sydney and the Sydney CBD to the south. The CBD views at night, are often considered desirable and valuable in terms of geographical reference points and skyline features. The noncomplying element of the building which varies from the height limit will have little to no impact on the views from the adjoining buildings.</p>

Objective	Demonstration
	<div></div> <p><b>Figure 4. Main view line at intersection of Sailors Bay Road looking south along Strathallen Avenue</b></p> <p>The view losses associated with the FSR exceedances to these properties are considered low value based on the Planning Principles established by <i>Tenacity Consulting v Warringah Council (2004) NSWLEC 140</i> (Tenacity). Any view lost as a result of the proposed building relates to open sky towards the east, which is considered low value. The key views to the south to St Leonards to the south-west and views to North Sydney and Sydney CBD to the south will be unimpacted.</p> <p>The minor increase in GFA over a part of the site will not provide any significant additional obstruction of views from these properties than would otherwise be experienced from a building envelope strictly complying with the permissible FSR.</p> <p><u>Privacy and visual intrusion</u></p> <p>The proposed development has also been designed to protect the visual and acoustic privacy of occupants within the development and to neighbouring residential development and the public domain, to the residential development adjoining the site at 31 and 31A Baringa Road. Whilst it is noted that the neighbouring dual occupancy does not have any windows along its western facade, apartments on the south-eastern have been designed to primarily face north or south with any of the windows on the eastern façade of the proposed building screened to maintain the visual privacy of the neighbouring building. In addition, the selection of planting and landscaped setbacks (including 3m landscaped buffer along eastern boundary) will provide additional privacy and enhanced visual effect to and from the proposed development.</p> <p><u>Overshadowing</u></p> <p>Solar studies are provided in the Architectural Plans and Architectural Design Report, prepared by Bates Smart. These studies illustrate that the shadows during mid-winter are largely cast onto Baringa Road and Strathallen Avenue, moving from the west onto Strathallen Avenue in the morning to the west onto Baringa Road during the afternoon. The proposed development will not restrict future surrounding dwellings from achieving solar access, as the proposed development primarily casts shadows onto existing roads. Minor overshadowing falls to adjacent dual occupancy to the west from 3pm, however, an acceptable level of solar access is achieved from 9am to 2pm and any overshadowing is minor. It is also noted that this</p>


Objective	Demonstration
	<p>adjacent property does not have windows along its western facade, therefore no impact to the living amenity of these properties due to this minor overshadowing is proposed.</p>  <p><b>Figure 5.</b> Shadow diagrams – Winter Solstice (21 June) – 09:00am (Source: Bates Smart, May 2024)</p>  <p><b>Figure 6.</b> Shadow diagrams – Winter Solstice (21 June) – 12:00pm noon (Source: Bates Smart, May 2024)</p>  <p><b>Figure 7.</b> Shadow diagrams – Winter Solstice (21 June) – 03:00pm (Source: Bates Smart, May 2024)</p>

Objective	Demonstration
	<p>Overall, the proposed development has been carefully designed to mitigate and manage impacts on site and in association with the proposed development to adjoining or nearby properties. The additional FSR sought through this variation request is minor, and will not result in or generate any unreasonable loss of privacy or views. It is consistent with the built form envisaged under the WLEP and WDCP and setbacks under Chapter 4 of SEPP (Housing) to adjoining developments, particularly, to the site at 31 and 31 Baringa Road.</p>
<p>(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,</p>	<p><u>Land use purpose</u></p> <p>The proposed 'shop-top housing' use is listed as permissible with consent in the E1 Local Centre zone under the WLEP.</p> <p>Consistent with this vision for the site and broader Northbridge Local Centre the design proposes a shop-top housing development comprising boutique residential dwellings above ground level retail tenancies, public landscaped courtyard and provisions for a future through site link*, improving ground plane activation and connectivity.</p> <p><i><b>*Note:</b> Council acknowledged that this proposed development does not (and cannot as no owners' consent has been obtained) provide legal access through the northern portion (134 Sailors Bay Road, legally referred to as Lot A in DP404929). The development does not have owners' consent for 134 Sailors Bay Road and access over that site does not form part of this application. Any treatment of the future "through-site link" is proposed within the site boundary of 57-69 Strathallen Avenue only, and to clarify, this DA does not and cannot provide any physical link through to 134 Sailors Bay Road at present.</i></p> <p>The proposed re-distribution of allowable floor space over the site has achieved a bulk and scale specifically which has been designed to respond to the existing context, including level changes across the site, low density residential neighbours and Willoughby Council's desire for a 'marker' on the prominent corner site.</p> <p>Further, consistent with the WDCP, in particular Part L, Clause 10.3 Master Plan for Northbridge Local Centre and Clause 10.4 Controls for Northbridge Local Centre, the development:</p> <ul style="list-style-type: none"> <li>• Provides a range and mix of dwelling typologies including provision of 4% affordable housing.</li> <li>• Provides basement parking areas with vehicular access only from Baringa Road.</li> <li>• Includes extensive landscaping and large communal open space (at ground level) in the form of a central courtyard and future through site link. Landscaped Rooftop gardens (private open space) is provided on Level 4 and is proposed as private to mitigate any privacy impacts to neighbouring low density residential dwellings.</li> <li>• Provisions for a future through site link from Strathallen Avenue to Sailors Bay Road which aims to maintain and improve laneway networks. Council acknowledged in the Pre-Lodgement Meeting (Appendix A to the SEE) with the Applicant that the development does not provide legal access through the northern portion (134 Sailors Bay Road).</li> </ul> <p><i>Note: Council acknowledged that this proposed development does not (and cannot as no owners' consent has been obtained) provide legal access through the northern portion (134 Sailors Bay Road). The existing laneway is located outside of the site boundary. The</i></p>

Objective	Demonstration
	<p><i>development does not have owners consent for 134 Sailors Bay Road and access over that site does not form part of this application.</i></p> <ul style="list-style-type: none"> <li>Proposes a 5 storey shop top housing development and includes the amalgamation of lots consistent with the WDCP controls.</li> <li>As discussed throughout this report, the proposed development aims to ensure amenity whilst mitigating and managing any potential impacts to neighbouring sites and public domain.</li> </ul> <p><u>Objectives of the zone</u></p> <p>The subject site is located within the E1 Local Centre Zone under the WLEP. An assessment of the bulk and scale of the proposed development against the objectives of the E1 Local Centre zone is provided Table 4 above.</p>
<p><i>(e) to permit higher density development at transport nodal points,</i></p>	<p>The building form responds the existing context, including level changes across the site, low density residential neighbours and Willoughby Council's desire for a 'marker' on the prominent corner site. It also responds to the recently updated WLEP and WDCP controls that envisaged greater density on the site/s.</p> <p>The Willoughby LSPS identifies that Northbridge is located on a potential eastern public transport route, an entry point to the LGA from the south and is focused on a major arterial route along Sailors Bay Road, Eastern Valley Way and Strathallen Avenue. The proposed development provides for a sympathetic increase in density whilst also providing for opportunities of a variety of retail premises to support the existing offering whilst providing for a unique opportunity offering to enhance the vibrancy of the Northbridge local centre.</p>
<p><i>(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,</i></p>	<p>Not applicable - The objective relates to Chatswood and in particular City Centre of Chatswood. The site is located within Northbridge Local Centre.</p> <p>Notwithstanding this, the proposed shop-top housing development provides 6 retail tenancies facing Strathallen Avenue. The development provides street activation on both Strathallen Avenue and Bringa Road in pursuant with Clause 6.7 of the WLEP. The proposed development offers ground floor retail opportunities that can facilitate employment, entertainment and cultural roles whilst providing a built form that is sympathetic to the Northbridge Local Character and existing built forms whilst also realising the vision of the centre and the increased density envisaged under the Strategic Plans and WDCP.</p>
<p><i>(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,</i></p>	<p>Not applicable - The objective relates to Chatswood and in particular City Centre of Chatswood. The site is located within Northbridge Local Centre.</p>
<p><i>(h) to provide functional and accessible open spaces with good</i></p>	<p>Not applicable - objective relates to the City Centre of Chatswood.</p>



Objective	Demonstration
<p><i>sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,</i></p>	<p>Notwithstanding this, the proposed development incorporates functional and accessible open spaces with good sunlight access during key usage times and provides for active and passive enjoyments for both the public and residents.</p> <p>The DA is accompanied by Architectural Plans and Design Report, prepared by Bates Smart (updated post lodgement dated 28 June 2024). The views from the sun in the Design Report illustrate that the public landscaped courtyard will receive considerable solar access from between 9am through to 2pm during the winter solstice (see Figures 2,3 and 4 above) and is compliant with Chapter 4 of SEPP (Housing) relating to the ADG. The courtyard is a flexible open space, lined by a covered colonnade and surrounded by trees. It provides both space for passive and active enjoyment for both the public and residents on site. It is accessed via the future through site link (the part of which is subject to this DA and within the site boundary) and is directly adjacent to the residential lobbies.</p>
<p><i>(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,</i></p>	<p>The built form and additional density on one lot maintains that the proposed development responds to the existing context, including level changes across the site, low density residential neighbourhoods and Council's desire in their WDCP for a 'marker' on the prominent corner site. The proposed development integrates appropriate transitions in building scale and density to neighbouring dwellings and retail uses. The proposed development integrates the following:</p> <p><u>Gradual transition in built form:</u></p> <ul style="list-style-type: none"> <li>• The scale and bulk of the built form, including consideration of the minor exceedance is complementary to the neighbouring residential development to the east via compliant setback as and landscaped buffers. The proposed development is also consistent with the 5 storey building envelope envisaged on the site under the WDCP, has been designed to address the sloping site conditions as well as the major and minor street conditions and scale of neighbouring buildings comprising shop top housing 4-5 storeys in height.</li> <li>• The proposed 5 storey built form structure has been designed with Level 04 (storey 5) of the development set back and comprised of materials of a light aesthetic which results in the development appearing as only a 4 storey development from ground level (See Figure 8 overleaf).</li> <li>• The proposal presents well-articulated facades to Strathallen Avenue and Baringa Road and reinforces the street wall heights established under the WDCP.</li> <li>• The proposed development provides a gradual transition in building scale and density from the commercial core towards residential zones. Built form setbacks consistent with the SEPP (Housing) has been implemented to ensure a respectful and sympathetic transition to the lower built forms and residential uses to the east and south of the site.</li> <li>• The proposed development is consistent with the Northbridge local centre character statement and Part L Chapter 10 of the WDCP which envisages shop top housing and a built form of a maximum of 5 storeys for amalgamated lots in the E1 Local Centre Zone.</li> <li>• The minor additional FSR on site and proposed rebalancing of FSR will not impede or impact the transitions or uses envisaged on site.</li> </ul>

Objective	Demonstration
	
	<p><b>Figure 8.</b> CGI illustrating recessive Level 04 (Source: Bates Smart, May 2024)</p> <p><u>Buffer zones</u></p> <ul style="list-style-type: none"><li>• The development includes 3m wide side deep soil landscaped setbacks and buffers between the development and adjoining lower density residential uses on the eastern boundary. A large central courtyard, driveway also provide additional buffers and setbacks. These compliant setbacks, step the building form down to respond to the lower density built forms to the east. Further, planters provided at all levels of the development provide additional screening and privacy to and from the residential dwellings. Overall, these areas act as a visual and functional buffer, easing the transition between different urban functions.</li></ul> <p><u>Design sensitivity</u></p> <ul style="list-style-type: none"><li>• Ensures sensitivity to the existing built environment and neighbourhood character. The design of the building complements the scale, architectural style, and character of both the existing commercial and residential areas to maintain continuity and visual coherence.</li><li>• The material palette references the neighbouring residential dwellings through the use of two different tones of brick. The lighter colour of the residential levels is sympathetic to the colour palette of the adjacent buildings to the north and south, whilst the warmer, darker colour of the podium grounds the building and references the traditional red brick and terracotta roofs of the nearby houses.</li><li>• The development presents from the street as a 4 storey development with Level 04 being setback and constituting a lighter facade expression to help reduce visual bulk and scale of the overall building.</li></ul>

Objective	Demonstration
	<ul style="list-style-type: none"> <li>The built form comprises compliant setbacks and the roof terraces are fringed by landscape, benefitting the residents, and visually softening the top level of the building when viewed from both the street and neighbouring properties.</li> <li>The lift overruns will be of a colour that is recessive in nature yet complementary to the materiality proposed on the development. The proposed lift overruns that exceed the height plane will not be visible from the street.</li> <li>The ground plane includes a provisions for a future site link to allow for future connectivity to neighbouring site, while the building form is split in two and stepped to address the existing site's sloped topography and building height limit.</li> </ul> <p><b>Note:</b> Council acknowledged that this proposed development does not (and cannot as no owners' consent has been obtained) provide legal access through the northern portion (134 Sailors Bay Road, legally referred to as Lot A in DP404929). The development does not have owners' consent for 134 Sailors Bay Road and access over that site does not form part of this application. Any treatment of the future "through-site link" is proposed within the site boundary of 57-69 Strathallen Avenue only, and to clarify, this DA does not and cannot provide any physical link through to 134 Sailors Bay Road at present.</p> <ul style="list-style-type: none"> <li>Setbacks to the upper level reduce the bulk and scale of the building as viewed from the street, while setbacks, landscaped balconies and planting zones address the lower density neighbours to the east.</li> <li>Metal louvres are used on curves to provide visual privacy to balconies from adjacent apartments and neighbouring buildings.</li> </ul> <p><u>Mix of uses (shop top housing)</u></p> <ul style="list-style-type: none"> <li>The development integrates a mix of uses on site including retail at ground level, residential above and communal landscaped courtyard to not only enhance the liveability of the area, integrate sympathetic mix of uses to aid in the transition of built forms but also fosters a sense of community and vibrancy.</li> </ul> <p><u>Public spaces and amenities</u></p> <ul style="list-style-type: none"> <li>The proposed development features a spacious landscaped courtyard that not only provides a setback and sympathetic transition to lower density adjoining uses.</li> <li>The courtyard is a flexible open space, lined by a covered colonnade and surrounded by trees. It is accessed via the future through site link and is directly adjacent to the residential lobbies.</li> <li>The courtyard has level access from the street and has passive surveillance from the future through site link, residential lobbies and apartments.</li> <li>A continuous awning along Strathallen Avenue, and wrapping around to Baringa Road, provides weather protection to the retail and main building entry.</li> </ul>
(j) to encourage the consolidation of certain land for redevelopment,	The proposed development comprises 1 shop-top housing development which covers 6 lots over 57-69 Strathallen Avenue. The development proposes the consolidation of the lots.
(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage	<p><u>Community facilities</u></p> <p>The landscaped courtyard located to the north-east of the site has been designed to cater for and provide outdoor amenity to visitors of the site and the wider local community, while also serving residents both on-site and in the surrounding area. This carefully designed communal landscaped public</p>

Objective	Demonstration
<i>items by permitting additional gross floor area for these land uses.</i>	<p>space at ground level offers a pedestrian-friendly setting that fosters interaction and vitality among various land uses.</p> <p><u>Affordable housing</u></p> <p>The site is identified as being within the Affordable Housing Area 1. The applicant is providing 4% affordable housing consistent with Clause 6.8 of the WLEP. In addition to this, it is noted that the proposed development provides a mix of 2, 3 and 4 bedroom apartments ranging from 112 to 260m<sup>2</sup> to cater for a range of persons.</p> <p><u>Conservation of heritage items</u></p> <p>The proposal seeks to demolish the existing structures located on the subject site, including the Northbridge Hotel located at 57 Strathallen Avenue. None of the existing buildings on the site, or neighbouring buildings, are heritage listed. The DA is accompanied by a Demolition Report, prepared by Urbis Pty Ltd which provides information about the potential heritage significance of the buildings located on the site, particularly the Northbridge Hotel. The Demolition Report concluded that none of the 3 properties located at 57-69 Strathallen Avenue, including the Northbridge Hotel, meet the requisite threshold for heritage listing and do not warrant retention on heritage grounds.</p>

As demonstrated in Table 1 above, the objectives of Clause 4.4 Floor Space Ratio development standard under the WLEP are achieved notwithstanding the proposed variation. The above sections have demonstrated that compliance with the maximum permitted building height standard is unnecessary in the circumstances of the case. The principal purpose of Clause 4.4 of the WLEP is to impose a suitable restriction regarding the maximum FSR of development on site.

The proposed development and balancing of FSR over the whole subject site reinforces the purpose of Clause 4.4, as it provides a built form that is consistent with the surrounding and envisaged built forms, accommodates for appropriate DDA servicing and will not result in any adverse environmental impacts, including in relation to height-specific assessment matters such as overshadowing, visual impact, and privacy.

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

## **4.2 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 and therefore is not relied upon.

## **4.3 The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.**

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

#### **4.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.**

The standard has not been abandoned by Council in this case and so this reason is not relied upon.

#### **4.5 The zoning of the land is unreasonable or inappropriate.**

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

## **5. 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.

Additionally, the proposed development, notwithstanding the minor non-compliance of the FSR development standard, does not undermine relevant statutory goals (when compared with a compliant development and the existing development).

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

- Despite the numerical non-compliance with the FSR development standard, the 5 storey development provides a scale and form of development that is compatible with surrounding 4-5 storey developments and one that is envisaged under the Northbridge Local Centre site specific WDCP provisions and the Willoughby Local Centres Strategy. The overall development will be compatible with the emerging higher-density character envisaged for the Northbridge Local Centre.
- The proposed contravention is a consequence of the strict interpretation of how FSR of a building is measured relative to a development's site area. However, the proposed development intends to amalgamate the lots and proposes a total GFA that would not exceed the total permissible GFA of the land should it be developed separately as 6 sites or two separate sites (based on the FSR provisions), as opposed to 1 amalgamated site as proposed.
- It would also be possible, but less desirable in planning terms (when compared to the proposed development) to develop a single building over the 6 'site areas' or 2 FSR zones that complies with GFA maximums for each of those site areas/zones. The proposed distribution of building mass is superior to the one that would be necessitated by a complying development. Thus promoting the orderly and economic use and development of land as per Clause 1.3(c) of the *Environmental Planning and Assessment Act 1979*.
- The proposed development provides compliant setbacks and has re-distributed GFA away from the development over the northern lots to which the lower FSR standard (2:1) applies. This has been done to respond to the sloped topography of the site, adjoining/adjacent properties which permit lower density development, and to provide an appropriate built form relationship to these properties, minimise the extent of height of building exceedance, and maintain amenity between the properties. This promotes the orderly and economic use and development of the land.
- The proposal responds to the site and its context, providing a thoughtful transition in height between existing adjoining buildings and stepping with the topography of the land. Accordingly, the proposal provides a built form and massing which is considered to positively contribute to the quality and



transitioning identity of the locality and is compatible with adjoining development. The proposal provides a contemporary built form that is compatible with the desired future character of the Northbridge Local Centre as set out in both Council's WDCP and Strategic documents.

- The design of the proposed development integrates compliant setbacks that step the built form and distribute the mass away from the eastern as well as southern and western boundaries which front Strathallen Avenue and Baringa Road. This alleviates the overall scale and bulk of the upper levels and improves solar access, views, amenity, and separation. The upper level of the development maintains substantial compliance with the height control.
- The proposed development provides greater separation to the adjoining low density residential property to the east to provide buffers and separations to reduces any bulk, overshadowing, privacy, and acoustic impacts to the properties to the east and south.
- The proposal is in the public interest as it is consistent with the objectives of the height standard and E1 Local Centre zone, given that the proposed development provides for the redevelopment of a site, that is consistent with the preferred development typology of 5 storey development for the subject site.
- The proposal will revitalise the existing site and improve the vibrancy and activity of the public domain with the provision of a landscaped central courtyard, 6 new retail tenancy spaces and streetscape tree planting. Furthermore, the proposed development provides provisions to allow for a future through site link connection through to Sailors Bay Road\* and promotes the provision of communal open space within the Northbridge Local Centre, which under the WDCP was noted as currently lacking.

*\* **Note:** Council acknowledged that this proposed development does not (and cannot as no owners' consent has been obtained) provide legal access through the northern portion (134 Sailors Bay Road, legally referred to as Lot A in DP404929). The development does not have owners' consent for 134 Sailors Bay Road and access over that site does not form part of this application. Any treatment of the future "through-site link" is proposed within the site boundary of 57-69 Strathallen Avenue only, and to clarify, this DA does not and cannot provide any physical link through to 134 Sailors Bay Road at present.*

- The proposed development is compatible with adjoining commercial, retail, and residential development, is highly articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. The upper storey of the building has been setback and carefully massed, to reduce the buildings bulk and scale.
- The proposed design represents an appropriate built form in terms to building alignment, modulation and articulation. The proposal will improve the streetscape and landscape quality of the area. High quality streetscape improvements include:
  - the treatment of landscaping and light toned permeable paving consistent with the area,
  - awnings that run the length of the active street frontage consistent with those in the area,
  - five (5) street trees (Tristanopsis Luscious 'Water Gum') provided along Strathallen Avenue and Baringa Road,
  - retail units and active street frontages along Strathallen Avenue and Baringa Road that feature high quality materials such as dark bronze steel shopfront framing and clear curved shopfront glazing
- The breach of the standard does not result in any material adverse environmental impacts to adjoining properties, and the building has been designed to respond to the existing and future built form character of the area.
- It promotes good design and amenity of the built environment, resulting in improved urban design and amenity considerations for both the local community and the future occupants of the building.
- The proposal promotes the orderly and economic use and development of land through the redevelopment of underutilised sites for an appropriate shop top housing development. It integrates an appropriate mix of housing (including affordable housing) which will provide needed housing will activate rejuvenate a currently underutilised site and aligns with the desired future character expected in the Northbridge Local Centre.

- Compliance with the development standard(s) would be unreasonable and unnecessary in the circumstances of this development as it is consistent with the objectives of the development standard(s) and the objectives of the E1 Local Centre zone, notwithstanding the contravention.

Therefore, it can be considered that the proposal does not result in any unreasonable environmental impacts, and it is considered there are sufficient environmental planning grounds to justify the contravention.

For completeness, we note that the size of the variation is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6: *GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]*.

Some examples that illustrate the wide range of commonplace numerical variation to development standards under Clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *Baker Kavanagh Architects v Sydney City Council [2014] NSWLEC 1003* the LEC granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187%.
- In *Abrams v Council of the City of Sydney [2019] NSWLEC 1583* the LEC granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75% (2.63:1 compared to the permitted 1.5:1).
- In *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* the LEC granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42% (3.54:1 compared to the permitted 2.5:1).
- In *Artazan Property Group Pty Ltd v Inner West Council [2019] NSWLEC 1555* the LEC granted development consent for a three storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27% (1.27:1 compared to the permitted 1.0:1).
- In *88 Bay Street Pty Ltd v Woollahra Municipal Council [2019] NSWLEC 1369* the LEC granted development consent for a new dwelling house, swimming pool and landscaping at 6 Bayview Hill Road, Rose Bay with a height exceedance of 49% (14.16m compared to the permitted 9.5m).

In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for variations to be approved in the right circumstances.

## 6. Conclusion

This written request is for a variation to the height standard under Clause 4.6 of the WLEP. The request justifies the contravention to the height standard in the terms required under Clause 4.6 of the WLEP, and in particular demonstrates that the proposal provides a built form that achieves a significantly better relationship with the surrounding context with no significant adverse environmental impacts, whereas a fully compliant scheme would result in a built form wildly inconsistent with the surrounding context.

This Clause 4.6 variation request demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- Is consistent with and achieves the objectives of the development standard in Clause 4.4 of WLEP (Wehbe Test 1).
- The proposed development over all lots (57-69 Strathallan Avenue) have been designed as a single shop-top housing development and FSR distributed to ensure the development provides an overall total GFA less than the maximum permissible for all lots.
- Compliance with the FSR standard is unreasonable and unnecessary as the location of the height and the building design has ensured that the proposed development will deliver an outcome that better responds to the surrounding context than could otherwise be achieved through a compliant scheme.
- There are sufficient environmental planning grounds to justify the contravention and specifically in that the proposal does not result in any non-complying overshadowing, solar access and does not have any unacceptable or unreasonable impacts to highly scenic views and privacy of adjoining residential development when compared to a fully compliant building envelope.
- The development achieves the objectives of the development standard and is consistent with the objectives of the E1 Local Centre zone. Specifically, the proposed development conforms to and reflects natural sloping topography of the site and will not create any significant material loss or amenity impacts with regard to overshadowing, privacy and view loss.
- The proposal is consistent with the preferred development typology of 5 storey development for the subject site.
- The proposed density and scale are consistent with the desired future character of the locality as envisaged under the recently updated WLEP controls and WDCP provisions which seek to boost diversity of housing choice and deliver more market housing (in particular shop-top housing), activated ground planes with retail tenancy spaces, and communal open space at ground levels.

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