



# CLAUSE 4.6 WRITTEN VARIATION TO FSR NON- DISCRETIONARY DEVELOPMENT STANDARD

1-17 Barrett Avenue, Thornleigh NSW 2120



# Clause 4.6 Written Variation to FSR Non-Discretionary Development Standard

Lot 3 to 10 DP 35569; 1-17 Barrett Avenue, Thornleigh NSW 2120

**Prepared for**



**Link  
Wentworth**  
Providing homes, building futures.

**By**



planning  
consulting  
strategy

ABN 39 585 262 237

A Level 12, 70 Pitt Street, Sydney 2000 P GPO Box 5013, Sydney  
NSW 2001

T (02) 9249 4100 F (02) 2949 4111 E [info@glnplanning.com.au](mailto:info@glnplanning.com.au)

ABN 39 585 262 237

A Level 12, 70 Pitt Street, Sydney 2000 P GPO Box 5013, Sydney NSW 2001

T (02) 9249 4100 F (02) 2949 4111 E [info@glnplanning.com.au](mailto:info@glnplanning.com.au)

## Acknowledgement of Country

Our cities exist on the unceded lands to the many nations of Indigenous Australia. GLN Planning Pty Ltd. respectfully acknowledges the Traditional Custodians of Country throughout Australia and recognises and respects their continuing cultural heritage, beliefs and connection to land, skies, waters and community.

Country soars high into the atmosphere, deep into the planter crust and far into the oceans. We pay our respects and honour the Elders of the past, present and emerging of the future.

This land always was and always will be traditional Aboriginal Land.



Planning  
Institute  
Australia

Date of final issue: February 2025

File Path: [https://glnplanning.sharepoint.com/sites/GLNPlanning/Shared Documents/Projects/Active/12286 Link Wentworth - 1-17 Barrett Ave ,Thornleigh/Report/GLN12286\\_Cl. 4.6.docx](https://glnplanning.sharepoint.com/sites/GLNPlanning/Shared Documents/Projects/Active/12286 Link Wentworth - 1-17 Barrett Ave ,Thornleigh/Report/GLN12286_Cl. 4.6.docx)

Project Manager: Jillian Sneyd

Client: Link Wentworth Housing

Project Number: 12286

The purpose for which this report may be used and relied upon is limited for that which it was commissioned. Copyright in the whole and every part of this document belongs to GLN Planning and may not be used, sold, transferred, copied or reproduced in whole or in part in any manner or form or in or on any media to any person without the prior written consent of GLN Planning.

## Document History and Status

Version	Issue To	Qty	Date	Prepared by	Reviewed by
V1 Draft	Client	1-e	14/2/2025	Z. Wilson	JS
Final	Client	1-e	26/2/2025	JS	JS
Final (addendum)	Hornsby Shire Council	1-e	29/07/2025	Z. Wilson	



## Table of Contents

<b>1</b>	<b>Background and Summary</b>	<b>2</b>
1.1	Introduction	2
1.2	Location	3
1.3	The Site	4
1.4	Zoning	5
1.5	Summary of Clause 4.6 Written Variation Request	5
<b>2</b>	<b>Clause 4.6 Reforms</b>	<b>7</b>
<b>3</b>	<b>Authority to Vary a Non-discretionary Development Standard</b>	<b>9</b>
3.1.1	Hornsby Local Environmental Plan 2013	9
<b>4</b>	<b>Non-discretionary Development Standard to be Varied</b>	<b>11</b>
4.1	Extent of Variation	11
4.1.1	Proposed variation	14
4.2	Objective of Section 108 of the Housing SEPP & Clause 4.4 of the LEP	15
<b>5</b>	<b>Assessment</b>	<b>16</b>
5.1.1	Objective at Section 108(1) of the Housing SEPP	17
5.1.2	Objective at Clause 4.4(1)(a) of HLEP	17
<b>6</b>	<b>Conclusion</b>	<b>25</b>

## Tables

Table 1.	GFA and FSR calculations	15
----------	--------------------------	----

## Figures

Figure 1.	Corner of Barrett & Sinclair Avenue streetscape render	1
Figure 2.	Site Plan	2
Figure 3.	Location of proposed development within Hornsby LGA	4
Figure 4.	Land use zoning	5
Figure 5.	Ground floor GFA calculations	14
Figure 6.	Level 01 GFA calculations	14



Summary of proposed development	
Property	<ul style="list-style-type: none"><li>• Lot 3 Deposited Plan 35569; 1 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 4 Deposited Plan 35569; 3 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 5 Deposited Plan 35569; 5 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 6 Deposited Plan 35569; 7 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 7 Deposited Plan 35569; 9 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 8 Deposited Plan 35569; 11 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 9 Deposited Plan 35569; 15 Barrett Avenue, Thornleigh NSW 2120</li><li>• Lot 10 Deposited Plan 35569; 17 Barrett Avenue, Thornleigh NSW 2120</li></ul>
Development	The development application seeks approval for the demolition of eight existing dwelling houses and their replacement with 3 two-storey seniors living buildings each containing 16 units, providing a total of 48 independent living units comprising 12 x 1 bedroom and 4 x 2 bedroom units in each building with associated works.
Development standard	Section 108(2)(c), Part 5, Chapter 3 of the <i>State Environmental Planning Policy (Housing) 2021</i> (floor space ratio)
Development Plans	Architectural (Sheet DA-0000 to DA-5202) Rev P2-P14 by Place Studio AU Pty Ltd., dated 30 July 2025



Source: Place Studio AU Pty Ltd., 2024

**Figure 1. Corner of Barrett & Sinclair Avenue streetscape render**



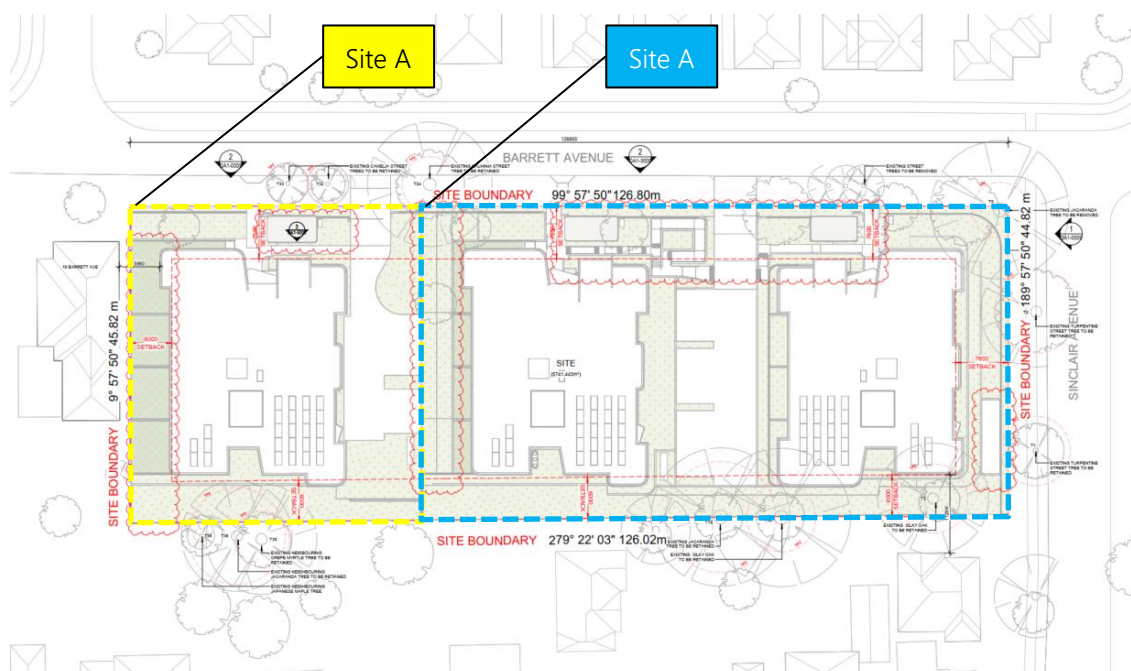
## 1 Background and Summary

### 1.1 Introduction

This Clause 4.6 written variation request (**Clause 4.6**) has been prepared for abundant caution as part of a development application submitted to Hornsby Shire Council (**Council**) on behalf of Link Wentworth Housing Ltd. (the **Applicant**). Specifically, this Clause 4.6 seeks variation of the floor space ratio (**FSR**) non-discretionary development standard for independent living units prescribed by Section 108(2)(c) of the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**).

The Applicant in partnership with Homes NSW (the NSW Government's social housing provider) seeks development consent from the Sydney North Planning Panel for the demolition of eight dwelling houses and replacement with 3 two-storey seniors living buildings each containing 16 units, providing a total of 48 independent living units comprising 12 x 1 bedroom and 4 x 2 bedroom units in each building with associated works comprising subdivision to create 2 Torrens title residential lots (Sites A & B), construction of two at grade car parking areas accommodating 12 vehicle spaces in total and associated landscaping and augmentation of existing infrastructure (the **Proposal**) (refer to **Figure 2**).

All existing eight dwelling houses are social housing dwellings. The Applicant is the registered landowner of Lot 8 in Deposited Plan (**DP**) 35569; 11 Barrett Avenue, Thornleigh NSW 2120. Homes NSW owns the remaining seven parcels (Lots 3 to 7, 9 & 10 in DP 35569; 1 to 9, 15 & 17 Barrett Avenue, Thornleigh NSW 2120. The Applicant currently manages the existing social housing dwellings on behalf of Homes NSW and will be responsible for overseeing the day-to-day management of the Proposal as a Tier 1 community housing provider under the National Regulatory System for Community Housing.



Source: Place Studio AU Pty Ltd

**Figure 2. Site Plan**

The Housing SEPP includes non-discretionary development standards at Section 108. Section 108(2)(c) of the Housing SEPP prescribes a maximum FSR of 0.5:1 for the purposes of independent living units.

The NSW Planning system provides a pathway that allows consent authorities to flexibly apply development standards via Clause 4.6 of the *Standard Instrument – Principal Local Environmental Plan 2006* (the **Standard Instrument LEP**). Clause 4.6 of the Standard Instrument LEP provides a merit-based assessment process that can allow for the justified variation to existing development standards to demonstrate the development standard contravention will result in an improved social, economic and environmental outcome.

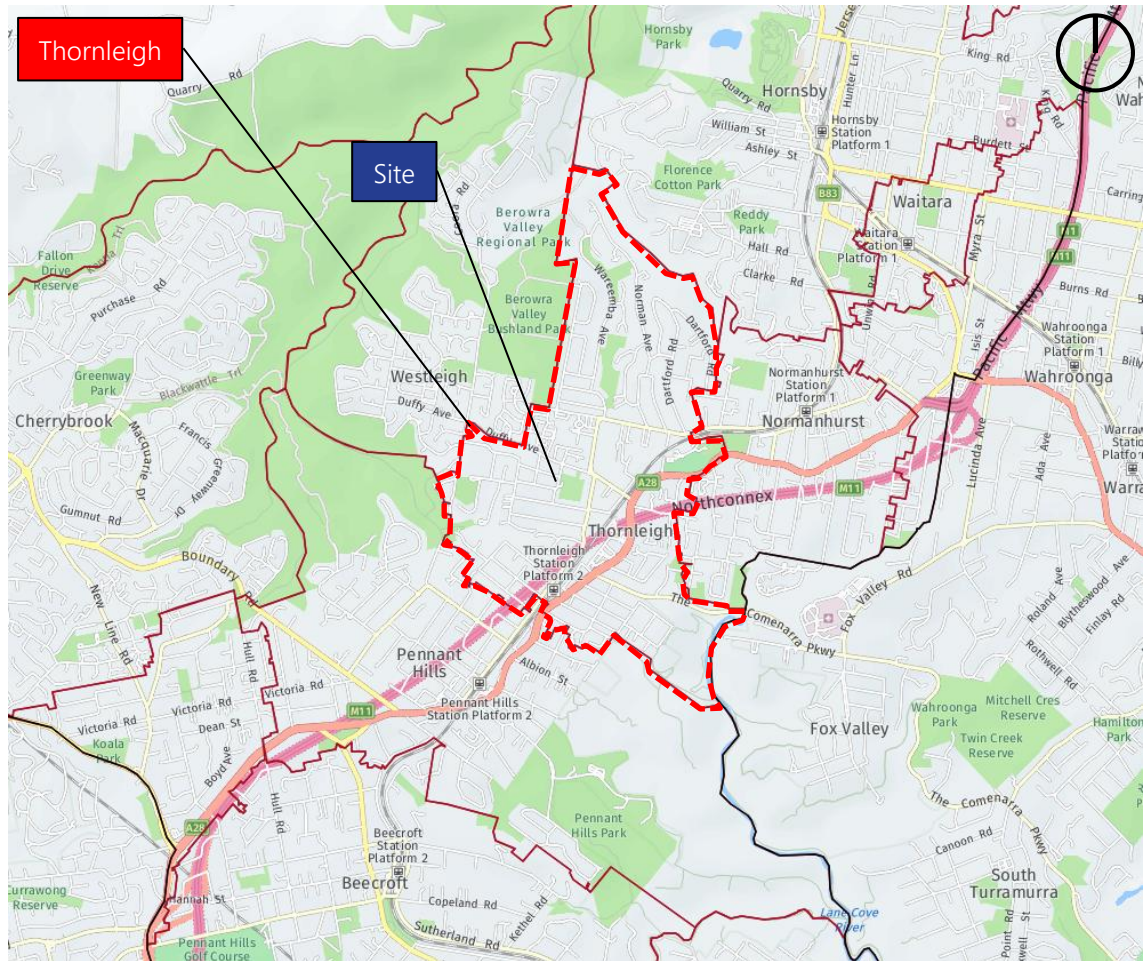
Under the Housing SEPP, new and updated non-discretionary development standards – which are the “Development standards that cannot be used as grounds to refuse consent” potentially invites the application of Clause 4.6 of the Standard Instrument LEP to development that does not comply. If a development does not comply with a non-discretionary development standards, Section 4.15(3) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) allows the consent authority to apply Clause 4.6 (or an equivalent provision) when considering and determining a development application. The application of Clause 4.6 will depend on the drafting of the non-discretionary development standard.

While a matter of law as to whether the provision of 108(2)(c) is a standard that must be met, this Clause 4.6 has been provided for abundant caution. It is noted that *Hornsby Local Environmental Plan 2013* (**HLEP**) does not apply a FSR development standard to the subject land or broader land zoned R2 Low Density Residential. This request for a variation to the FSR non-discretionary development standard outlines the justification for the contravention having regards to the circumstances of the case and demonstrates that compliance with the non-discretionary development standard is unreasonable and unnecessary.

## 1.2 Location

The Proposal is located in the Upper North Shore suburb of Thornleigh, within the Hornsby Shire Council Local Government Area (**LGA**). Thornleigh is bounded in the north by Waitara Creek, the suburb of Normanhurst and the Lane Cover River in the east, the suburb of Pennant Hills in the south and Quarter Sessions Road, Duffy Avenue and the suburb of Westleigh in the west (refer to **Figure 3**). Thornleigh is located approximately 22 kilometres northwest of the Sydney Central Business District.





Source: .id Consulting Pty Ltd

**Figure 3. Location of proposed development within Hornsby LGA**

### 1.3 The Site

The land of the Proposal (the **Site**) consists of 8 Torrens title residential allotments legally identified as:

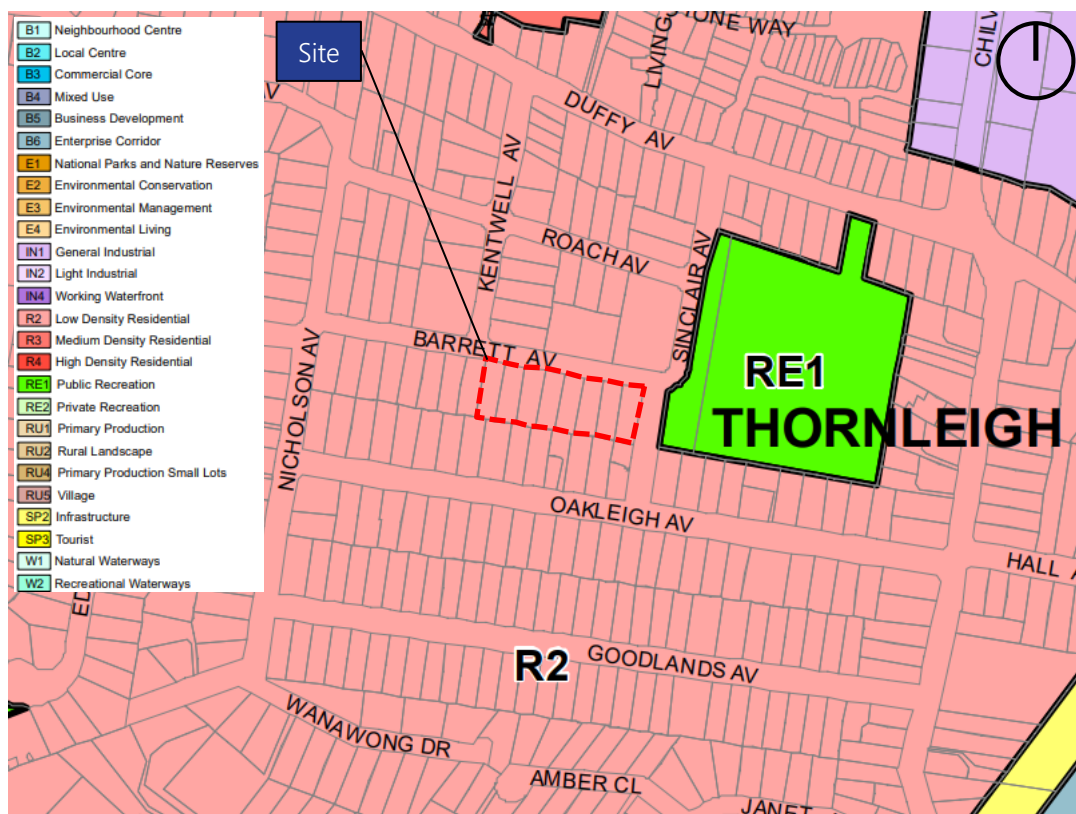
- Lot 3 DP 35569; 1 Barrett Avenue, Thornleigh NSW 2120
- Lot 4 DP 35569; 3 Barrett Avenue, Thornleigh NSW 2120
- Lot 5 DP 35569; 5 Barrett Avenue, Thornleigh NSW 2120
- Lot 6 DP 35569; 7 Barrett Avenue, Thornleigh NSW 2120
- Lot 7 DP 35569; 9 Barrett Avenue, Thornleigh NSW 2120
- Lot 8 DP 35569; 11 Barrett Avenue, Thornleigh NSW 2120
- Lot 9 DP 35569; 15 Barrett Avenue, Thornleigh NSW 2120
- Lot 10 DP 35569; 17 Barrett Avenue, Thornleigh NSW 2120.

The Site is a corner allotment and rectangular in shape with dual frontage of 126.8 metres to Barrett Avenue and 44.82 metres to Sinclair Avenue. The total site area is 5,741.443m<sup>2</sup>. The Site slopes in a south-easterly direction, with a maximum reduced level (**RL**) of RL 179.53 metres Australian Height Datum (**AHD**) at the north-west boundary and RL 169.92 metres AHD at the south-east boundary.

Each allotment currently contains a detached single storey brick cottage with tile roof and a variety of ancillary structures including concrete driveways and hardstand, carports, awning, sheds, pergolas and fencing. Landscaping consists of mature plantings, shrubbery, and turf throughout each allotment. All properties obtain public road access via Barrett Avenue.

## 1.4 Zoning

The Site is zoned R2 Low Density Residential pursuant to the HLEP (refer to **Figure 4**). Independent Living Units for the purposes of seniors housing are permissible development the R2 Low Density Residential zone by operation of Section 81 of the Housing SEPP. Despite the provisions of HLEP seniors housing is permissible with development consent.



Source: State of New South Wales (Department of Planning, Housing and Infrastructure) 2025

**Figure 4.** Land use zoning

## 1.5 Summary of Clause 4.6 Written Variation Request

The proposal includes the construction of 3 two-storey seniors living buildings each containing 16 units, providing a total of 48 independent living units comprising 12 x 1 bedroom and 4 x 2-bedroom units in each building. The three buildings are proposed to be located within 2 lots created by resubdivision of the overall site. The proposed buildings marginally exceed the 0.5:1 FSR non-discretionary development standard for independent living units pursuant to the Housing SEPP.

For abundant caution, a variation to the non-discretionary FSR development standard is sought having regard to the site context, compliance with the objectives of the standard and a site



responsive design that provides a high level of internal amenity and social interaction without adversely impacting the amenity of the surrounding properties and public domain.

## 2 Clause 4.6 Reforms

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument LEP which changes the operation of the Clause across all Local Environmental Plans and State Environmental Planning Policies, including the Housing SEPP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument LEP. The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & (5) amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of Clause 4.6, as amended, seek to recognise that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The Clause provides objectives and a means by which a variation to a standard in the Housing SEPP or any other environmental planning instrument (such as the LEP) can be achieved as outlined below.

### **4.6 Exceptions to development standards [compulsory]**

*(1) The objectives of this clause are as follows—*

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

*(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

#### **Note—**

*The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

*(4) The consent authority must keep a record of its assessment carried out under subclause (3).*

*(5) (Repealed)*

*(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

*(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*(7) (Repealed)*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) clause 5.4,*

*(caa) clause 5.5.*

***Direction—***

*Additional exclusions may be added.*



### 3 Authority to Vary a Non-discretionary Development Standard

Non-discretionary development standards are defined in Section 4.15(6)(b) of the EP&A Act as *'development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards'*. A clause will explicitly state if it is a non-discretionary development standard. Section 108 of the Housing SEPP includes several non-discretionary development standards for independent living units.

Non-discretionary development standards are standards that, if complied with, prevent consent authorities from:

- taking the non-discretionary development standard into further consideration in determining the development application
- refusing the development application on the grounds that the development does not comply with those standards
- imposing a condition of consent that has the same, or substantially the same, effect as the standard but is more onerous than the standard.

If a development does not comply with a non-discretionary development standard, Section 4.15(3) of the EP&A Act allows the consent authority to apply Clause 4.6 (or an equivalent provision) when considering and determining the development application. The application of Clause 4.6 will depend on the drafting of the non-discretionary development standard.

The proposal exceeds the maximum 0.5:1 FSR non-discretionary development standard prescribed in Section 108(2)(c) of the Housing SEPP. In accordance with the Department of Planning, Housing and Infrastructure's (formerly the Department of Planning and Environment) 'Guide to Varying Development Standard' (November 2023), development consent in relation to non-discretionary development standards must not be granted unless a written request has been considered, and the consent authority is satisfied of the relevant matters pursuant to Clause 4.6(3) of the Standard Instrument LEP.

#### 3.1.1 Hornsby Local Environmental Plan 2013

Clause 4.6(2) of HLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by HLEP, or any other environmental planning instrument (including Section 108(2)(c) of the Housing SEPP).

The objectives of Clause 4.6 of HLEP seek to recognise that in particular circumstances strict application of development standards may be unreasonable or unnecessary. This Section provides objectives and a means by which a variation to the development standard can be achieved as outlined below.

#### 4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows—*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5.

(8A), (8B) (Repealed)



## 4 Non-discretionary Development Standard to be Varied

A variation is requested to Section 108(2)(c) of the Housing SEPP in accordance with Clause 4.6(3) of HLEP. For the purposes of this Clause 4.6, it is assumed to be a development standard as defined by Section 1.4 of the EP&A Act.

As the proposal satisfies the eligibility criteria at Section 108 of the Housing SEPP, the development standard which the Applicant is seeking to vary is Section 108(2)(c) (and it is not the standard FSR development standard in the HLEP). This approach is consistent with *Pepper J's Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49 (AUF)

Section 108(2)(c) prescribes:

*(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

### 4.1 Extent of Variation

The HLEP Dictionary and Section 4.5 of the HLEP define the following relevant terms:

**floor space ratio**—see clause 4.5.

#### 4.5 Calculation of floor space ratio and site area

(1) **Objectives** The objectives of this clause are as follows—

- (a) to define **floor space ratio**,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to—
  - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
  - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
  - (iii) require community land and public places to be dealt with separately.

(2) **Definition of “floor space ratio”** 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.

(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.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) **Exclusions from site area** The following land must be excluded from the site area—

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

(5) **Strata subdivisions** *The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.*

(6) **Only significant development to be included** *The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.*

(7) **Certain public land to be separately considered** *For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.*

(8) **Existing buildings** *The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.*

(9) **Covenants to prevent “double dipping”** *When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.*

(10) **Covenants affect consolidated sites** *If—*

(a) *a covenant of the kind referred to in subclause (9) applies to any land (**affected land**), and*

(b) *proposed development relates to the affected land and other land that together comprise the site of the proposed development,*

*the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.*

(11) **Definition** *In this clause, **public place** has the same meaning as it has in the Local Government Act 1993.*

**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.*

A further definition of gross floor area is provided under Clause 82 of Housing SEPP provides:

**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 another building, measured at a height of 1.4m above the floor—

*(a) excluding the following—*

- (i) columns, fin walls, sun control devices and elements, projections or works outside the general lines of the internal face of an external wall,*
  - (ii) cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts,*
  - (iii) car parking and internal access to the car parking,*
  - (iv) space for the loading and unloading of goods, including access to the space,*
  - (v) areas for common vertical circulation, including lifts and stairs,*
  - (vi) storage, vehicular access, garbage and services within the basement,*
  - (vii) for a residential care facility—floor space used for service activities provided by the facility within the basement,*
  - (viii) terraces and balconies with outer walls less than 1.4m high,*
  - (ix) voids above a floor at the level of a storey or storey above, and*
- (b) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling.*

4.1.1 Proposed variation

The Site has an overall area of 5,731.58m<sup>2</sup>, split between Site A (1,910.75m<sup>2</sup>) and Site B (3,820.83m<sup>2</sup>) (refer to **Figure 2**). Based on the above, the maximum permissible FSR of 0.5:1 equates to 2,865.79m<sup>2</sup> of allowable gross floor area (**GFA**), split between Site A (955.37m<sup>2</sup>) and Site B (1,910.41m<sup>2</sup>) (refer to **Figure 5** & **Figure 6**).

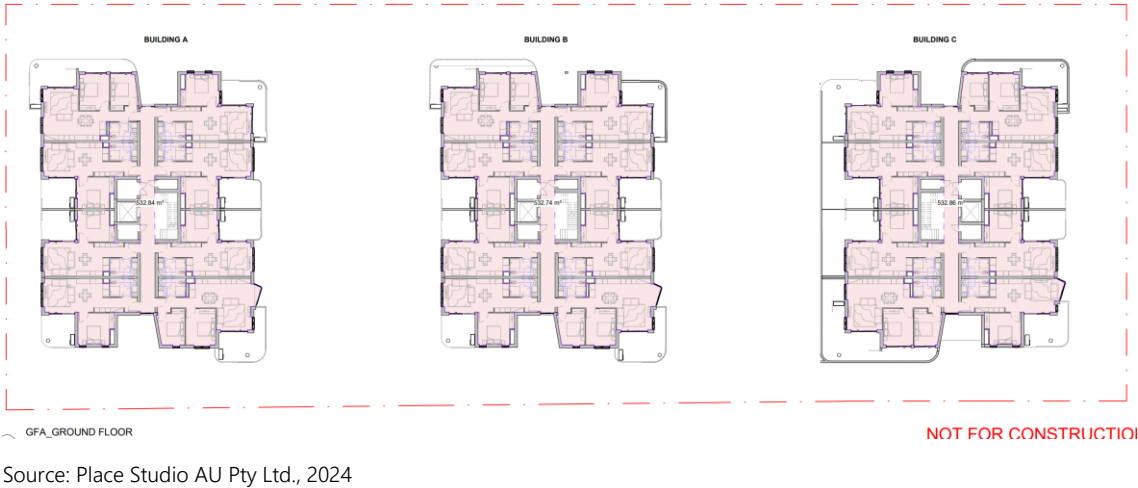


Figure 5. Ground floor GFA calculations

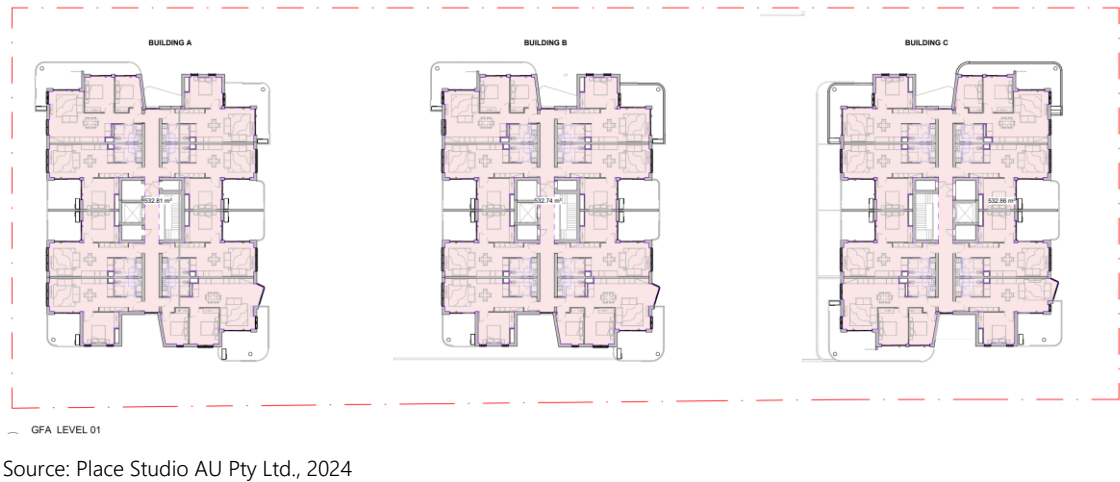


Figure 6. Level 01 GFA calculations

The extent of the proposed variation is illustrated in **Table 1**.

**Table 1. GFA and FSR calculations**

Lot	Area	Allowable GFA	Proposed GFA	Permitted FSR	Proposed FSR	Proposed variation
Site A	1,910.75m <sup>2</sup>	955.37m <sup>2</sup>	1,065.64m <sup>2</sup>	0.5:1	<b>0.56:1</b>	<b>11.54%</b>
Site B	3,820.83m <sup>2</sup>	1,910.41m <sup>2</sup>	2,131.21m <sup>2</sup>	0.5:1	<b>0.57:1</b>	<b>11.56%</b>
<b>Overall</b>	5,731.58m <sup>2</sup>	2,865.79m <sup>2</sup>	3,196.85m <sup>2</sup>	0.5:1	<b>0.57:1</b>	<b>11.55%</b>

## 4.2 Objective of Section 108 of the Housing SEPP & Clause 4.4 of the LEP

The objective of Section 108 of the Housing SEPP is as follows:

*(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

The above objective could be considered to principally have an administrative function that provides limited insight to the underlying intent of the standard. Further, the objective applies to a number of non-discretionary development standards addressing building height, FSR, landscape area, deep soil zones, solar access and private open space.

If a development does not comply with a non-discretionary development standard, Section 4.15(3) of the EP&A Act allows the consent authority to apply Clause 4.6 (or an equivalent provision) when considering and determining the development.

There are no stated objectives to Section 108(2)(c) of the Housing SEPP.

This is discussed in the assessment of the variation below.

The objective of Clause 4.4 of HLEP is as follows:

*(1) The objectives of this clause are as follows—*

*(a) to permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

## 5 Assessment

The following sections discuss the grounds for the variation to Section 108(2)(c) of the Housing SEPP against the relevant provisions of Clause 4.6 of HLEP.

Clause 4.6(3)(a) & (b) of the HLEP requires the Applicant to provide justification that compliance with the maximum FSR development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Decisions of the Land and Environment Court of New South Wales (**Court**) notably *Wehbe v Pittwater Council* [2007] NSWLEC 827 have established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. These include:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
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 compliance with the standard is unnecessary and unreasonable
5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

In addition, the Court has clarified the appropriate tests for a consideration of a request to vary a development standard, including that:

- the five ways to be satisfied about whether to invoke Clause 4.6 as outlined above are not exhaustive (merely the most commonly invoked ways)
- it may be sufficient to establish only one way
- the written request must be "sufficient" to justify contravening the development standard
- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.

This Clause 4.6 addresses the five-part test described in *Wehbe*, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

It is our opinion that the proposal satisfies the first of the five stated ways to demonstrate that the development standard is unreasonable and unnecessary. In this instance the proposal would satisfy the objectives of the development standard to the extent relevant to the current proposal for the reasons outlined below.

### 5.1.1 Objective at Section 108(1) of the Housing SEPP

The intent of this objective is to provide a non-discretionary standard that limits the consideration of certain requirements including FSR. As outlined by Section 4.15(2) of the EP&A Act, compliance with a non-discretionary standard would prevent imposition of a more onerous standard. As outlined above, in this context, the objective at Section 108(1) has principally been an administrative function that the proposal is not inconsistent with.

### 5.1.2 Objective at Clause 4.4(1)(a) of HLEP

The HLEP does not prescribe a FSR for the Site.

The underlying objective of HLEP is to limit the extent of development that may occur on the Site, relevant to the size of the land.

#### 1st Way – The objective of the standard are achieved notwithstanding non-compliance with the standard

Preston CJ at paragraph 43 in *Wehbe v Pittwater Council* [2007] NSWLEC 827 stated:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

There are no associated objectives associated with the non-discretionary development standard or Section 108 of the Housing SEPP in general. However, there are a number of principles for the entire Housing SEPP which is addressed below.

*The principles of this Policy are as follows—*

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



The proposed variation is important because it allows for the optimisation of the delivery of social housing for seniors to meet the needs of very low-, low- and moderate-income households on site and within the environmental capacity of the 9.5 metre height control.

Strict compliance with the 0.5:1 FSR non-discretionary development standard would result in a reduction of 331.06m<sup>2</sup> of floor space, or approximately 6 social housing units<sup>1</sup> in total, all of which are proposed as social housing units. The architectural design of the buildings does not readily enable such a modification without impacting on the overall development which seeks to provide for 3 buildings with floor space distributed equally across the site.

The predominant means of controlling the apparent bulk and scale of development within the R2 Low Density zone under HLEP is the maximum height of buildings. The Housing SEPP applies a 9.5m maximum height of building controls that prevails over the 8.5m applicable under HLEP. Setback controls are contained within Hornsby Development Control Plan (**HDCP**). Notably and as a result of the Housing SEPP provisions prevailing over the local adopted controls, there are no controls that are directly applicable to the proposed built form. The proposed development achieves compliance with both the 9.5 maximum height of buildings and adopts setbacks consistent with Section 4.3 Setbacks of the Seniors Housing Design Guide, notably, Section 4.3.3 and 4.3.4 which provide:

*4.3.3 Determine setbacks from the location of neighbouring properties, their private outside open space and primary views to and from the development.*

*4.3.4 Provide setbacks to respect neighbours privacy, overshadowing and existing amenity.*

The setbacks are addressed within the SEE and provide for deep soil planting around the perimeters of all buildings which in conjunction with the building design and landscaping proposed will respect the privacy and amenity of the adjoining dwelling houses.

Therefore, the objective of the development standard to the extent relevant to the Proposal is satisfied, and compliance with the FSR development standard in the circumstances is considered both unreasonable and unnecessary for the following reasons.

*(a) to permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The Site is situated within a 1.1 kilometre walking distance (or 15-minute walk) of the Thornleigh town centre and Thornleigh Railway Station. Two new bus stops for which in principle approval has been obtained to be relocated on each side of Duffy Avenue, which (approval for future works to be undertaken concurrently with the Proposal) are located within 400 metres from the Site. Regular bus services from these bus stops provide morning and afternoon loop services between Westleigh and Hornsby, Monday through Sunday (route 587) and morning and afternoon services between Westleigh and Pennant Hills, Monday through Friday (route 586), all of which provide convenient access to retail, commercial, community and recreational uses.

The Proposal envisages three buildings, each composed of two wings, joined by a central corridor. The design is expressed through a refined, neutral palette. Elegant brick detailing lends to a timeless character, while strategically placed windows and fibre cement cladding introduce moments of

---

<sup>1</sup> Based on a 1-bedroom apartment area of 53.7m<sup>2</sup>.

modernity and lightness. Across the Site, open grass spaces, and lush landscaping are provided, establishing a setting for future residents to connect, relax and enjoy their surroundings.

The Proposal is a maximum of two storey in height and has been specifically designed to be of a height and scale that reflects the desired character of the locality. Nonetheless, the Proposal will not prejudice the development of adjoining properties or unreasonably impact on the amenity of future residents given:

- The Site benefits from existing roadways on two sides
- The Proposal incorporates appropriate separation to comply with the building design criteria of HDCP
- It is considered the Proposal has been designed with consideration of the visual impact of the development on the locality. The Proposal incorporates high quality and articulated facades that will contribute to architectural diversity to deliver a streetscape with visual interest
- All 48 units (100%) will be provided as adaptable housing. The Adaptable Housing Standard provides considerations for people 'aging in place' which demands increased access clearances in bedrooms, dining, lounge, kitchen and bathrooms
- The increased floor area contributes to the articulation of the buildings
- The Proposal takes its cues from surrounding buildings and provides a compliant building envelope in relation to setbacks
- The variation to the FSR non-discretionary development standard allows for a superior distribution of GFA that will enhance the amenity of apartments in terms of layout, ventilation and solar access. An alternative FSR compliant scheme would delete floor space for the purposes of affordable housing which would not provide any planning benefits, but instead, a disproportionate result to the amenity impacts caused by the FSR variation. That is strict compliance will result in a poorer planning outcome.

The Proposal meets the objectives of the development standard and meets the objectives of the R2 Low Density Residential zone. The Proposal is also consistent with Council's adopted *Hornsby Local Strategic Planning Statement (2020)*, *Housing Strategy (2020)* and *Hornsby Affordable Housing Strategy (2024)* which supports providing affordable housing for local residents (e.g. the elderly and disabled).

The Proposal supports a place-based approach, providing appropriately designed building designs that respond to and contribute to the context of the site, essentially facilitating three apartment buildings which have the proportion and scale of a large, detached dwelling in a landscaped setting. Further, the Proposal positively responds to the public domain with an open and welcoming streetscape facade with passive surveillance through the inclusion of balconies. Despite the exceedance in prescribed FSR, the Proposal is consistent with the character anticipated by the planning controls of the streetscape and will revitalise the existing housing stock and choice whilst contributing positively to the overall character of the streetscape generally.

The above environmental planning grounds are not general propositions and are unique circumstances to the Proposal, particularly the fact that the additional FSR is contained at the interior of three permissible buildings which could be accommodated on the Site and the disconnect between the FSR and a development of the Site for seniors housing which will be leased to social housing tenants with one of three buildings owned by Homes NSW and all buildings to be managed by the Applicant.

The HDCP does not anticipate development as is permissible under the Housing SEPP. The form of the buildings proposed is that of residential flat buildings of two storey construction. HDCP provides controls for residential flat building of three or more storeys and multi dwelling housing. The proposed development is neither of these built forms.

Consistent with the other non-discretionary development standards and the intent of HDCP, the Proposal complies in that no building has a height of more than 9.5 metres consistent with the Housing SEPP height development standard, a minimum landscaped area of 30% (39.18% is proposed), a minimum of 15% deep soil zone (24.37% is proposed) and minimum of 2 hours direct solar access to at least 70% of the dwellings (84% is proposed) and building setback controls.

The Proposal is in line with the capacity of existing and planned infrastructure for the locality.

The Proposal has adopted a high articulated design with the additional FSR largely internalised. The variation to the FSR will allow for a variation in GFA which will create a more interesting streetscape, provide greater amenity for the occupants and have no significant impacts on the amenity of adjoining properties. At the very least, the Proposal is considered compatible with the scale of existing and surrounding buildings and is considered entirely reasonable in this instance.

Separately, the NSW Government recognises the need to build more homes for our growing population, boost housing supply and improve housing affordability. Under the National Housing Accord (the **Accord**), NSW is tasked with delivering approximately 377,000 new well-located dwellings, including approximately 15,800 social and affordable dwellings by 2029. Facilitating the delivery of additional dwellings, including more affordable dwellings through the Housing SEPP will ensure NSW is well-placed to deliver on its commitment under the Accord. As such, the NSW Government has committed to undertaking expedited zoning, planning and land release to deliver the joint commitment on social and affordable housing in well-located areas, ensuring achievements of targets for social and affordable housing are met.

The Applicant has partnered with Homes NSW to deliver the Proposal. This partnership is essential to ensuring long term strategies, infrastructure, and investment are available to address the housing crisis. Although not applicable to the Proposal, under Chapter 2, Part 2, Division 1 of the Housing SEPP, the in-fill affordable housing provisions include a FSR bonus of up to 30% for projects that include residential development and provide at least 10% of the GFA as affordable housing. The in-fill affordable housing bonuses apply to development by a registered community housing provider.

**2nd Way – The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

The underlying objective and purpose of the FSR control is relevant to determine the appropriateness of the proposed variation. Whilst the Site is subject to a specified numerical control for FSR (Section 108(2)(c) of the Housing SEPP, the principles and underlying purpose (at Section 3 of the Housing SEPP) behind this development standard are equally important.

The Proposal proposes an overall maximum GFA of 3,196.85m<sup>2</sup>, split between Site A (1,065.64m<sup>2</sup>) and Site B (2,131.21m<sup>2</sup>), an overall variation of 11.55% of the non-discretionary development standard. The overall additional GFA (331.06m<sup>2</sup>), split between Site A (110.27m<sup>2</sup>) and Site B (220.8m<sup>2</sup>). As such, the Proposal is consistent with the principles at Section 3 of the Housing SEPP on the basis that the overall GFA on the Site is as anticipated by the application of the FSR non-discretionary development standard and the variation to the FSR control of 0.5:1 will facilitate the delivery of new social housing to meet the needs of very low, low and moderate income households, specifically being seniors and

people with a disability whilst providing an appropriate level of amenity within proximity of existing development and planned infrastructure and services.

**3<sup>rd</sup> Way – The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.**

As discussed above, the development as proposed is consistent with the objective of Section 108 of the Housing SEPP. The Proposal provides for higher density affordable housing in accordance with the zoning of the Site.

Principally, the FSR non-discretionary development standard seeks to facilitate affordable housing delivery within developments. Strict compliance with the FSR non-discretionary development standard would result in the overall number of affordable housing units being reduced by the additional FSR enabled in this instance (approximately 6 social housing units) and as a result the underlying objectives or purpose of the standard would be defeated.

**4<sup>th</sup> Way – The development standard has been virtually abandoned or destroyed by the Council's own decisions.**

This consideration is not relevant in this case.

**5<sup>th</sup> Way – The zoning of the site is unreasonable or inappropriate and consequently so is the development standard.**

This consideration is not relevant in this case.

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

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the non-discretionary development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The following environmental planning grounds are submitted to justify contravening the 0.5:1 FSR non-discretionary development standard. The proposed FSR enables a beneficial approach to

addressing social housing for seniors and disabled persons by providing an appropriate design, scale and form that reflects a desirable character for development in the locality.

- The Proposal will provide equitable access across all dwellings (100% adaptable dwellings). The proposed distribution of GFA over two levels will provide a high level of articulation and present a building that is not visually jarring to the casual observer on Barrett Avenue and Sinclair Avenue when viewed in context of surrounding properties.
- The areas that exceed the development standard are not discernible as viewed from the public domain, and do not contribute to distinguishable bulk, scale or density of the buildings. The testing of planning controls including building height, setbacks, landscaped area and deep soil zone demonstrate that the proposal is consistent with the anticipated built form outcome for the Site and will achieve a built form outcome that is consistent with the intended outcome of the existing FSR controls.
- The design of the proposed buildings and arrangement of massing has been carefully considered and is supported by the height and scale of other neighbouring and nearby developments with similar height, bulk and scale within the R2 Low Density Residential zone. The additional FSR for this proposal is not considered to be significant in this context and does not result in any perceptible or detrimental impact or a built form outcome which differs from that which could be expected on the Site under the Housing SEPP. Therefore, the appropriate contextual fit of the Proposal provides an environmental planning ground to support the proposed variation.
- It is noted that Preston CJ provides that the development is not required to demonstrate a beneficial effect relative to a compliant development, however, in this instance it is considered that strict compliance would not achieve any improved outcome for the development and would in fact result in a diminished outcome, simply resulting in less housing and in particular social housing for seniors and persons with a disability than that which is capable of being provided within the demonstrated environmental capacity of the Site.
- The variation to the FSR allows for an equitable distribution of GFA that will enhance the amenity of apartments in terms of layout, ventilation and solar access. An alternative FSR compliant scheme would delete floor space at the centre of the building which would not provide any planning benefits, but instead, a disproportionate result to the amenity impacts caused by the FSR variation. That is, strict compliance will result in a poorer planning outcome.
- The Proposal takes its cues from surrounding buildings and maintains a two-storey presentation to all boundaries, providing greater setbacks between buildings than currently exists (7.6 metres to the north, 7.825 metres to the east, 6.075 metres to the south and 5.7 metres to the west) than would be required for new built form under the Complying Development pathway, with increased opportunities for deep soil landscaping, consistent with the existing landscaped gardens in the locality.
- It is considered that there is an absence of any impact of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically:
  - as demonstrated in the accompanying shadow diagrams, the extent of non-compliance does not create overshadowing that would be inconsistent with HDCP requirements, that is the accompanying shadow analysis illustrates the surrounding topography and existing boundary fence separating the Site with 30A Oakleigh Avenue, Thornleigh NSW 2120 casts a shadow that prevents at least 50% of the private open space from receiving the required 3 hours of direct sunlight

- the FSR breach does not result in any significant view impacts
  - the FSR breach will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building.
- The variation to the FSR non-discretionary development standard will give better effect to the aims of the Housing SEPP and *Environmental Planning and Assessment Regulation 2021*. In particular:
  - the proposed variation will provide additional sustainable housing in social and environmental terms and better achieve urban planning policies
  - approval of the proposed variation will allow for a variation of FSR equally across the site which is commonly an accepted urban design approach
  - approval of the proposed variation will support a combination of housing types by providing a well located and compact development that will be a life changing opportunity for residents
- The Proposal will facilitate the provision of significant affordable housing.
  - while the term “environmental planning ground” is not defined, the EP&A Act defines the environment as:

***environment*** includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings.

Social housing forms part of the built environment that will affect the living environment of persons with lower incomes. The provision of social housing will affect both individuals and broader social groups by allowing for greater housing choice and will maximise the opportunity for persons with lower incomes to reside in locations that have good accessibility to employment opportunities. The Site is ideally situated within a 1.1 kilometre walking distance (or 15-minute walk) of the Thornleigh town centre and Thornleigh Railway Station. Additionally, there are two bus stops located on each side of Duffy Avenue, which (subject to approved future works to be undertaken concurrently with the Proposal to relocate said bus stops) are located within 400 metres from the Site that provide access to retail, commercial, community and recreational uses.
  - 100 percent of the GFA (48 units in total) of the Proposal will be delivered as affordable housing under the Housing SEPP.
- Strict compliance with the 0.5:1 FSR non-discretionary development standard would result in a reduction of 331.06m<sup>2</sup> of floor space, or approximately 6 social housing units in total, all of which are proposed as social housing units.
- Environmental objectives underpinning both the land use zoning, building height development standards and the need for consistency with the desired character for the area have not been compromised. This includes ensuring amenity impacts have been considered including privacy and solar access requirements.
- The proposed variation to the FSR non-discretionary development standard is unlike a variation to a height control for example, where there is a specific area of encroachment. In this regard, there is not necessarily one specific area(s) responsible for the FSR variation. However, the overall visual impact of the building mass based on the FSR variation is considered minor with the building design incorporating a number of design elements to reduce the overall mass including setbacks, articulation, fenestration, balconies, etc. The building masses as proposed also provide a suitable transition within the desired future character for the area.
- Consequently, the Proposal achieves the objects in Section 1.3 of the EP&A Act, specifically:

- the Proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for high quality residential apartment development containing a mix of 1 and 2-bedroom apartments for social housing tenants (Section 1.3(c.)). As such, the Proposal will provide for a housing type that is not commonly found within the locality.
- despite the FSR variation, the Proposal facilitates the delivery and management of affordable housing delivered by a Tier 1 registered community housing provider under the Housing SEPP (Section 1.3(d)). Access to good quality, affordable housing which is fundamental to wellbeing. It can help reduce poverty and enhance equality of opportunity, social inclusion and mobility.
- the Proposal promotes good design and amenity of the built environment through a well-considered design which is in response to its setting and context (Section 1.3(g)). Provides a building of lesser scale than traditional residential flat buildings that incorporates a lift providing an accessible building for all residents.

In addition to the above, there are no negative externalities that will not be addressed by either design or standard conditions of development consent resulting from the proposed variation from the non-discretionary development standard.



## 6 Conclusion

A variation to the strict application of the FSR non-discretionary development standard is considered appropriate in the circumstances of the proposed development. For the reasons set out in this request, it is considered that strict compliance with the FSR non-discretionary development standard contained within Section 108(2)(c) of the Housing SEPP is both unreasonable and unnecessary in the circumstances of the case, and as such, there are sufficient environmental planning grounds to justify the variation.

The Proposal results in an optimum outcome for the Site given its metropolitan urban context and contributes to social and affordable housing for seniors and persons with a disability of the community who cannot meet their housing needs in the general market.

The Proposal meets the underlying intent of non-discretionary development standard and in accordance with Clause 4.6 of the HLEP, demonstrates that the development standard is unreasonable and unnecessary in this case and that the variation is justified.

It is requested that the consent authority exercise discretion and find that this request adequately addresses the matters required to be satisfied under Subclause 4.6(3) of the HLEP as:

- Consistency with the principles of the Housing SEPP and R2 Low Density Residential zone is achieved.
- Compliance with the non-discretionary development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the non-discretionary development standard.
- No unreasonable environmental impacts arise as a result of the Proposal.
- There is no public benefit in maintaining strict compliance with the standard.
- Finally, the Proposal and overall GFA is in the public interest because it is consistent with the principles of the Housing SEPP and the R2 Low Density Residential zone and facilitates the delivery of housing and in particular social housing.

In this regard it is reasonable and appropriate to vary the FSR non-discretionary development standard to the extent proposed.