



Amended Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 4.4 – Floor Space Ratio

Address: 6-12 Rutledge St Queanbeyan

Relevant EPI: Queanbeyan Palerang Regional Local Environment Plan 2022

Proposal: Demolition of six (6) existing mixed-use buildings and the construction of two apartment buildings for residential development, including retail and commercial spaces on ground floor and basement carparking, 15% Affordable Housing component.

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Contents

1. Introduction	3
1.1 Description of the planning instrument, development standard and proposed variation.....	4
1.1.1 What is the name of the environmental planning instrument that applies to the land?.....	4
1.1.2 What is the zoning of the land?	4
1.1.3 What are the Objectives of the zone?	4
1.1.4 What is the development standard being varied?.....	4
1.1.5 Is the development standard a performance based control? Give details.....	4
1.1.6 Under what clause is the development standard listed in the environmental planning instrument?	4
1.1.7 What are the objectives of the development standard?	4
1.1.8 What is the numeric value of the development standard in the environmental planning instrument?	5
1.1.9 What is the proposed numeric value of the development standard in the development application?	5
1.1.10 What is the percentage variation (between the proposal and the environmental planning instrument)?	6
1.2 Assessment of the Proposed Variation.....	6
1.2.1 Overview	6
1.3 Assessment of the proposed development against Clause 4.6.....	8
1.3.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?.....	9
1.3.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?.....	10
1.3.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?.....	11
1.3.4 Is the zoning of the land unreasonable or inappropriate?	11
1.3.5 Are there sufficient environmental planning grounds to justify contravening the development standard?	11
1.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?	13
1.5 Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?	15
1.6 Is there public benefit in maintaining the development standard?.....	15
1.7 Is the objection well founded?.....	16
2.0 Conclusion	17

1. Introduction

This is a written request to seek an exception to development standards pursuant to Clause 4.6 – Exceptions to Development Standards of Queanbeyan-Palerang Regional Local Environmental Plan (QPRLEP) 2022. The development standard for which the variation is sought is Clause 4.4 Floor Space Ratio under QPRLEP 2022.

The numerical non-compliance also arises from the decision to include 15% affordable infill housing within the development. Whilst the *SEPP Housing 2021* has recently been amended to provide for an additional 30% of Height and FSR for a development that provides 15% affordable housing, these provisions are not applicable to this development due to savings provisions. Rather than lodge a new application for these provisions to be applicable, this Clause 4.6 request has been amended to provide for 15% affordable housing within the development.

The proposed floor space ensures that an appropriate relationship is achieved between the proposed form and the evolving character between historical and contemporary buildings in the area. It is considered the proposed buildings are complementary to the heritage significance of adjacent local heritage items, as outlined within the heritage impact assessment accompanying the application.

The request is considered to be reasonable and justified in that compliance with the standards are unnecessary on the grounds that:

- There are sufficient environmental planning grounds to justify the contravention of the development standard, namely the provision of more housing and 15% affordable housing in an accessible location consistent with the NSW Government's Plan Future Directions for Housing in NSW, and consistent with the relative objectives of the development standard and under QPRLEP 2022;
- The proposed development is in the public interest, as the objectives of the land use zone and the standards are both achieved notwithstanding the non-compliance;
- The contravention achieves a better outcome for, and from, the development without significant environmental impact by providing more housing, better utilisation of well-located land, efficient use of existing serviced urban land and is consistent with the emerging character of the locality;
- The request satisfies the tests set by the Land and Environment Court for the justification and assessment of variations to development standards.
- The contravention of the development standard allows for 15% of the dwellings to be Affordable Housing and will meet all of the development standards for this provision that have recently been amended in the *SEPP Housing 2021* but are not applicable to this development due to savings provisions.

In accordance with the QPRLEP 2022 requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied;
- identifies the variation sought;
- summarises relevant case law;
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- demonstrates there are sufficient environmental planning grounds to justify the contravention;

- demonstrates that the proposed variation is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out;
- provides an assessment of the matters the secretary is required to consider before providing concurrence.

1.1 Description of the planning instrument, development standard and proposed variation

1.1.1 What is the name of the environmental planning instrument that applies to the land?

The Queanbeyan-Palerang Regional Local Environmental Plan (QPRLEP) 2022.

1.1.2 What is the zoning of the land?

The land is zoned B3: Commercial Core.

1.1.3 What are the Objectives of the zone?

Zone B3 Commercial Core

1 Objectives of zone

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To recognise and reinforce the primacy of the Queanbeyan central business district as the commercial and retail centre of Queanbeyan.*
- *To encourage high density residential uses in conjunction with retail or employment uses where appropriate.*

1.1.4 What is the development standard being varied?

The development standard being varied is the floor space ratio development standard.

1.1.5 Is the development standard a performance based control? Give details.

No, the floor space ratio development standard are numerical controls.

1.1.6 Under what clause is the development standard listed in the environmental planning instrument?

The development standard is clause 4.4 Floor Space Ratio under QPRLEP 2022.

1.1.7 What are the objectives of the development standard?

The objectives of Clause 4.4 are:

(a) *to ensure the density, bulk and scale of development is appropriate for the site,*

(b) to ensure the density, bulk and scale of development is consistent with the streetscape and character of the area in which the development will be located,

(c) to facilitate development that contributes to the economic growth of the Queanbeyan central business district, the Googong town centre and the neighbourhood centres in Queanbeyan.

1.1.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.4 establishes a maximum floor space ratio for the site of 3:1, as illustrated in the extract of the Floor Space Ratio Map in Figure 1.

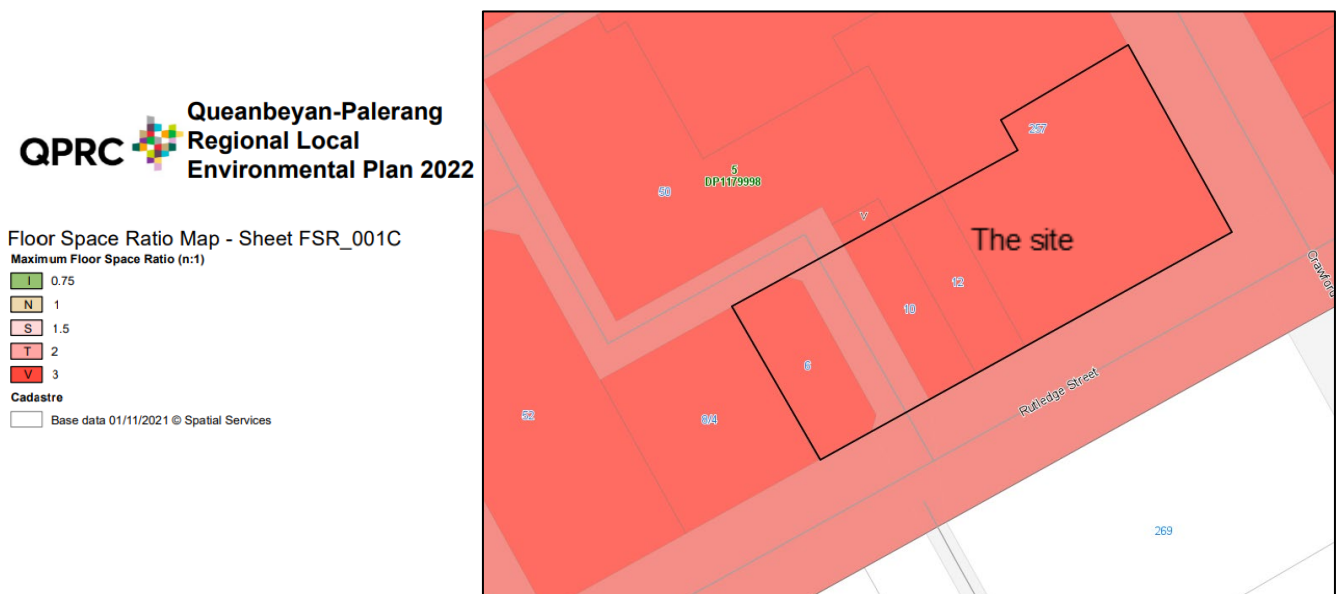
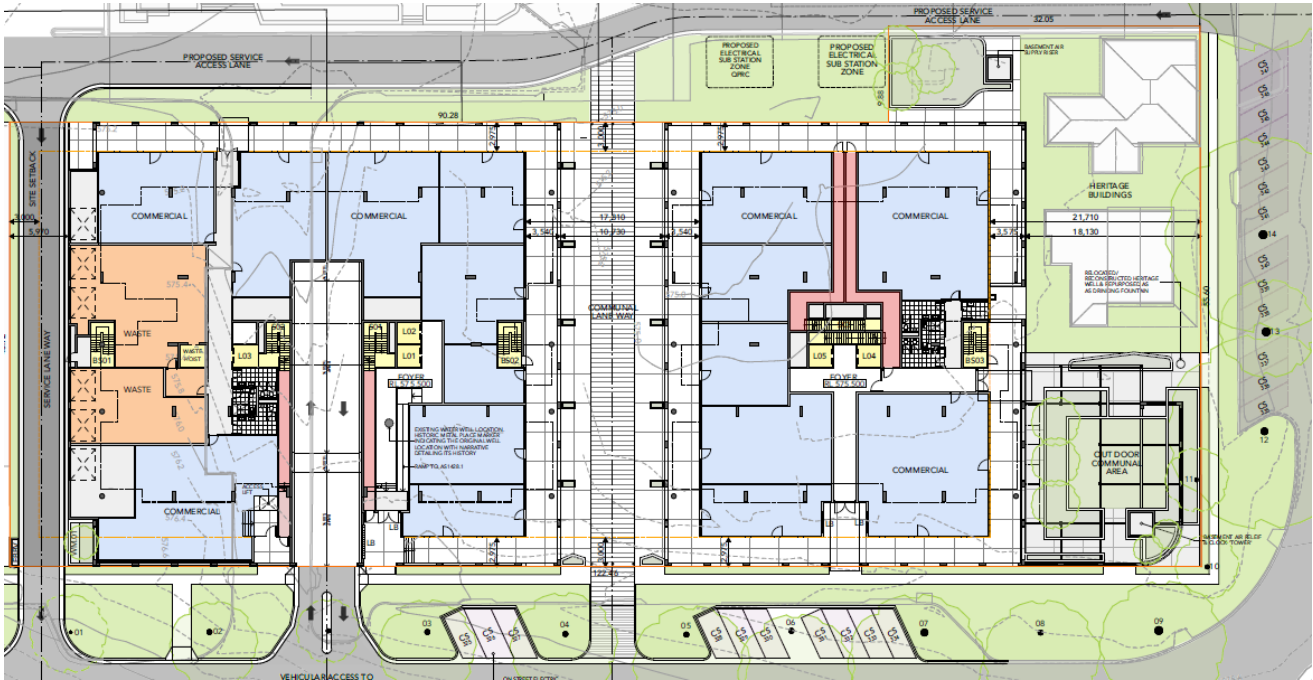


Figure 1: Extract of QPRLEP 2022 Floor Space Ratio Map

1.8.9 What is the proposed numeric value of the development standard in the development application?

The proposed maximum floor space ratio is 3:1. The below diagram represents the site coverage of the development.



1.1.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal exceeds the maximum floor space ratio development standard by 1768m² which is 10% (3.3:1).

1.2 Assessment of the Proposed Variation

1.2.1 Overview

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) 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.*

Clause 4.6(2) provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- “(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) that there are sufficient environmental planning grounds to justify contravening the development standard."

In accordance with Clause 4.6(3), the applicant requests that the maximum floor space ratio standard prescribed under LEP Clause 4.4 be varied for the proposed development.

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in Clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Planning Circular PS 20-002 issued 5 May 2020 '*Variations to development standards*'. This circular is a notice under Section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given. The concurrence of the Secretary can be assumed for the purpose of this request as the DA is declared to be regionally significant development and will be determined by the Southern Regional Planning Panel.

This request demonstrates that compliance with the maximum floor space ratio development standard prescribed for the subject land in Clause 4.4 of the LEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation, and that the approval of the variation is in the public interest because it is consistent with the development standards and zone objectives and serves the public interest by providing affordable housing within the CBD.

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3');*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*

- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;*
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61;* and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.*

1.3 Assessment of the proposed development against Clause 4.6

The following sections of the report provide a comprehensive assessment of the request to vary the development standard relating to floor space ratio in accordance with Clause 4.6 of the LEP. Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by DPIE (dated August 2011); and
- Relevant planning principles and judgements issued by the NSW Land and Environment Court (LEC).

The following sections of the variation request provides detailed responses to the key questions required to be addressed within the above considerations and clause 4.6 of the LEP. This variation request has been informed by an assessment of the proposal on:

- Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- Whether there are sufficient environmental planning grounds to justify contravening the development standard; and
- Whether the proposed development is in the public interest.

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*. This method requires demonstration that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* at [34] the Chief Judge held that:

“establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This variation request addresses the first method outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827*. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The variation request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated, or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131* at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The variation request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed

non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

This assessment concludes that the variation request is well founded and that the particular circumstances of the case warrant flexibility in the application of the floor space ratio standard.

1.3.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the floor space ratio standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The proposal complies with the objectives of the B3 Commercial Core zone, as detailed in the assessment at Table 1 below.
- The proposal is consistent with the objectives of the Floor Space Ratio development standard as detailed in the assessment at Table 3 below.
- The development is in the public interest as it is consistent with the objectives for the development within the zone and replaces outdated commercial and mixed use buildings with a high quality mixed use development comprising contemporary new retail, commercial and residential floor space. The new building will activate the sites two street frontages of Crawford and Rutledge Street with a building of high visual appeal and will significantly enhance the streetscape and urban design outcomes of this part of the commercial centre.
- The site has been identified as part of the Civic and Cultural Precinct under Council's Queanbeyan CBD Spatial Master Plan 2020 and responds positively to the plan by providing additional activated laneways through the site and complies with the preferred use of the site which is apartments with a ground level commercial area which will help activate the precinct.
- The additional floor space ratio allows for the provision of 15% affordable housing within the development, which provides for a positive social outcome for the development, in providing additional affordable housing within an appropriate location close to public transport and employment opportunities.
- Notwithstanding the variation to the floor space ratio, the proposed development responds to the Local Strategic Planning Statement in the following ways:
 - The proposal offers a higher density development on land that adjoins open space that provides an increase in amenity and recreational opportunities (priority 4.2.4)
 - The proposal provides for infill and mixed use development that provides additional forms of housing to suit the changing demographics of the community. (priority 4.3.3)
 - The proposal increases the density in the city centre to reduce travel needs and promote reinvigoration (priority 4.3.7)
 - The proposal provides for 15% affordable Housing (Direction 27 Deliver more opportunities for affordable housing).
 - The proposal provides for a range of housing choices at different costs to meet the changing needs of the community and consider the options for community housing provider partnerships to provide affordable housing (priority 4.4.9)
- The proposed floor space ratio ensures that an appropriate relationship is achieved between the existing form and the evolving character between historical and contemporary buildings in

the area. It is considered the proposed building works are therefore complementary to the heritage significance of the existing buildings and are not considered to detract from the heritage significance of either adjacent local heritage item, as outlined within the heritage impact assessment accompanying the application.

- The proposal would not result in loss of important views to adjoining properties, which predominately comprise commercial developments. The additional floor space and height would have limited impacts on the solar amenity of adjoining sites as demonstrated by the provided shadow diagrams. The FSR non-compliance does not create unacceptable amenity impacts.
- The proposal seeks to revitalise this area of the CBD through careful design and ensuring pedestrian movement through the site. The proposed bulk and scale is proportionally compatible to the existing building being constructed next door and surrounding context by introducing a complementary modern building that expands on the key characteristics of the history of the precinct and enables the interpretation and appreciation of old vs new.
- Notwithstanding the non-compliance, the proposal complies with the objectives for the Queanbeyan Central Business district as follows:
 - The proposal implements the key planning and design guidelines outlined in the Queanbeyan CBD Masterplan 2019
 - The proposal retains the streetscape qualities and retailing function of Crawford St
 - The proposal respects the heritage buildings on the site
 - The proposal facilitates shop top housing
 - The proposal maintains the existing streetscape attributes and contributes positively to the area by creating pedestrian access through the site
 - The setbacks meet the requirements of the DCP in terms of setbacks from the street and side and rear boundaries.
 - The proposal provides for a mix of housing, including 15% affordable housing to meet the needs of the Queanbeyan community.

Based on the above assessment, it is considered that strict compliance with the LEP floor space ratio standard is unreasonable and unnecessary in this instance.

1.3.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying objective of the floor space ratio control is to achieve an appropriate density on the site which is compatible with the context of the site. Due to the design, location and configuration of the proposed development, the proposal successfully achieves these objectives and will provide a considered built form response that will deliver a positive urban design outcome. However, strict compliance with the floor space ratio control would lead to a less satisfactory outcome as it would result in a development which fails to fulfil the environmental capacity of the site and would result in no affordable housing being made available within the development.. Accordingly, it is considered that strict compliance would likely defeat the underlying objective or purpose of the floor space ratio control because it would encourage a less desirable outcome for the site.

1.3.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

It cannot be said that the floor space ratio development standard has been abandoned.

1.3.4 Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location.

1.3.5 Are there sufficient environmental planning grounds to justify contravening the development standard?

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

"...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and neutral or beneficial effect relative to a compliant development"

There is an absence of environmental harm arising from the contravention and sufficient environmental planning grounds to justify contravening the floor space ratio development standard for the following reasons:

- The proposed non-compliance with the floor space ratio standard achieves a superior planning outcome compared to a 'compliant' scheme and better achieves the objectives of the floor space ratio standard. The non-compliance also allows for 15% affordable housing to be provided as part of the development.
- The variation will have negligible consequential impacts on the amenity of neighbouring properties uses in terms of visual intrusion, solar access, privacy, and overshadowing.
- The non-compliances with the built floor space ratio standard are not perceptible from the public domain and will have no material impact on solar access to the site or surrounding properties.
- The proposal complies with the objectives of the development standard and the objectives of the B3 Commercial Core zone.
- The proposal will result in significant benefits and high levels of amenity for future residents through the provision of a well designed roof top landscaped communal open space and associated structures, as well as the provision of 15% affordable housing, which will be owned and managed by a community housing provider.
- The proposal results in the provision of significantly greater non-residential floor space than is required. The provision of this retail floor space, combined with the higher floor to floor heights of this space, will result in a dynamic new commercial offering in the Town Centre, with activated street frontages and increasing services and employment generation in excess of what otherwise might be expected at this site.
- Non-compliance with the standard does not contribute to adverse environmental, social, or

economic impacts and does not give rise to unacceptable impacts associated with bulk and scale, overshadowing, privacy, rather the proposal will result in considerable positive social and economic impacts.

- The proposal provides a high-quality contemporary commercial space and residential apartments that are appropriate for the site's location and current/future setting within a Town Centre and close to public transport.
- A reduction of the proposed floorspace ratio would provide negligible benefits to the streetscape and adjacent properties, while significantly reducing the amenity of future occupants and users of the development and would remove the affordable housing component of the development, which delivers an important social outcome for the development.
- The addition of 15% affordable housing as part of the development has a greater area than the 10% additional FSR being requested. A calculation of 18 one bed units and 9 two bedroom units equates to a floor area of 1778 square metres, whilst the variation being sought is for 1776 square metres. The additional floor area will be taken up by the affordable housing component proposed as part of the development.

Taking into account the above and the particular circumstances of the proposal and the site, it is neither reasonable nor necessary to require strict compliance with floor space ratio of 3:1.

Given the high level of compliance with other planning controls and the high-quality design of the overall proposal, the variation to the development standards is supportable from environmental planning grounds.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance with the height of building development standard and floor space ratio development standard in this instance.

1.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

Table 1 below demonstrates the consistency of the development with the land use objectives that apply to the subject land under the B3 Commercial Core Zone.

Table 2 demonstrates the consistency of the development with the objectives of the maximum floor space ratio development standard (under Clause 4.4).

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following tables:

Table 1:

Consistency with the objectives of the B3 Commercial Zone in the LEP	
Objective	Assessment
<i>To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.</i>	The proposal includes a mixture of compatible land uses through the provision of commercial premises (including retail premises) on the lower level with a residential flat building above. Open space is also provided on the ground floor for use by the whole community.
<i>To encourage appropriate employment opportunities in accessible locations.</i>	The proposal includes retail and commercial floor space on the lower levels and residential space on the levels above. The development has been designed to ensure all public spaces are accessible and all ground floor commercial space will provide employment opportunities in accessible locations.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The site is within 400m of public transport and bicycle parking has been provided for patrons and residents. The site has been designed to allow permeability of pedestrians through the creation of the central laneway, open space and landscaping around the heritage buildings and access on the western edge of the development.
<i>To recognise and reinforce the primacy of the Queanbeyan central business district as the commercial and retail centre of Queanbeyan.</i>	<p>The proposal achieves this by providing a significant new contemporary commercial and retail floor space on the ground floor.</p> <p>The proposal will contribute to the activation of the public plaza on the adjoining site and will help strengthen the area through the provision of commercial tenancies on the ground floor of the development.</p> <p>The development will enhance the activation of the area between Rutledge St and the Q Theatre and creates permeability through the site with the central laneway and open space on the corner of Crawford and Rutledge Streets. The development has been designed to reinforce the cultural and civic hub of Queanbeyan.</p>
<i>To encourage high density residential uses in conjunction with retail or employment uses where appropriate.</i>	The development includes 178 apartments with a range of 1, 2 and 3 bedroom units as shop top housing. 15% of these dwellings will be managed by a community housing provider and will meet the definition of "Affordable Infill Housing".

Table 2:

Consistency with the objectives of the floor space ratio standard in the LEP	
Objective	Assessment
<i>to ensure the density, bulk and scale of development is appropriate for the site</i>	The locality is undergoing transformation. The bulk and scale of the proposed development reflects the emerging character of the area.
<i>to ensure the density, bulk and scale of development is consistent with the streetscape and character of the area in which the development will be located,</i>	Despite the exceedance in prescribed FSR, the proposed design is consistent with the prevailing and emerging character of developments of a similar scale within the locality. The proposed development complements the heritage significance of the existing buildings and the character of the area. The proposed built form is in keeping within the density and surrounding context of emerging surrounding development within the area.
<i>to facilitate development that contributes to the economic growth of the Queanbeyan central business district, the Googong town centre and the neighbourhood centres in Queanbeyan</i>	The proposal would result in increased pedestrian traffic to this part of Queanbeyan which is considered a positive for the area and local businesses.

The proposal is considered to be in the public interest as it is consistent with the objectives of the B3 commercial Core zone and the objectives of the Floor Space Ratio development standard.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views impacted, overshadowing of public spaces or detrimental streetscape outcomes associated with the floor space ratio variation.

Overall it is considered that strict maintenance of the floor space ratio standard in this instance is not in the public interest as:

- The proposal achieves and is consistent with the objectives of the floor space ratio standards provided in clause 4.4 of the LEP, as outlined in this variation request.
- The proposal is consistent with the objectives of Zone B3 Commercial Core, as outlined in this variation request.
- The proposal achieves a superior planning outcome compared to a 'compliant' scheme and better achieves the objectives of the relevant development standard.
- Compliance with the floor space ratio standards is an unnecessary hindrance to the ability of the proposal to deliver a vibrant mixed-use development and establish an urban landmark for the Queanbeyan town centre.
- Compliance with the floor space ratio would require the removal of the 15% of dwellings that meet the definition of "Affordable Housing", which would result in a poorer social outcome for the development and the Queanbeyan community.

1.5 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Southern Regional Planning Panel under Planning Circular PS 20-002 issued 5 May 2020. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?

The proposed non-compliance with the floor space ratio development standards will not raise any matter of significance for state or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the subject site and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

Clause 4.6(5)(b) – is there a public benefit of maintaining the planning control standard?

The proposed development achieves the objectives of the Floor Space Ratio development standard (under Clause 4.4) and Zone B3 Commercial Core objectives notwithstanding the technical non-compliance.

Maintaining the planning control standard would result in the removal of 15% of the dwellings being available for affordable housing and therefore would result in a poorer public benefit outcome.

Overall it is considered that the strict maintenance of the floor space ratio development standard in this instance is not in the public interest for the reasons detailed above. There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 variation request prior to granting concurrence, should it be required. The proposed floor space ratio variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act 1979* and the provision of 15% of the dwellings being affordable housing.

The contravention of the development standard in this case does not raise an issue of state or regional planning significance as it relates to local and contextual conditions. Generally, as to concurrence, for the reasons outlined above – and particularly having regard to the site specific nature of this clause 4.6 variation request – there is nothing about this proposed floor space ratio variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters requested to be taken into consideration before granting concurrence.

1.6 Is there public benefit in maintaining the development standard?

There is no public benefit in maintaining the floor space ratio standards given the limited amenity impacts associated with the development and the positive streetscape outcome and residential amenity benefits and provision of affordable housing that would arise from the redevelopment of the subject site in the manner proposed.

It should also be noted that there is a growing body of case law that has determined that it is in the public interest to give effect to the objectives of relevant legislation. It is relevant in this regard that the EP&A Act 1979 has as an objective 'the delivery and maintenance of affordable housing' (Clause 1.3(d)). The provision of an additional 27 apartments being made available as affordable housing and will be managed by a community housing provider, gives effect to the objective of the Act and demonstrates that there is no public benefit in maintaining the development standard in this instance.

1.7 Is the objection well founded?

For the reasons set out in this written request, strict compliance with the floor space ratio standard contained within Clause 4.4 of the LEP is unreasonable and unnecessary in the circumstances of the case. In addition, there are sufficient and well founded reasons for supporting the objection.

In summary:

- The proposal satisfies the objectives of the floor space ratio standard notwithstanding the non-compliance such that to require compliance with the standard on this site would be unnecessary. The proposed variation to the floor space ratio standard is a consequence of providing a development that responds to the site and will result in a development that is compatible with the existing site context and is consistent with the desired future character of the site and locality.
- The proposal minimises visual impacts and achieves adequate solar access and privacy to adjoining land uses by adherence to the required building setbacks and separation distance of the ADG.
- The proposal on the subject land is consistent with the scale and intensity of the emerging future character of the locality in that it generally complies with the recently approved civic building on the adjoining site and a Shop Top Housing Development on the northern side of Monaro St recently approved in 2023.
- The application of Clause 4.6 to vary the development standard is not numerically limited. The consent authority has broad discretion under Clause 4.6(2) and Clause 4.6(4)(a)(i) to determine variations of any numeric value above a development standard without the concurrence of the Secretary. This is confirmed in the published planning system circular Planning Circular PS 20-002 issued 5 May 2020 '*Variations to development standards*'.
- In addition, no provision of Clause 4.6(8) restricts the variation sought in this instance. The consent authority can therefore be satisfied that this variation request can be lawfully approved pursuant to Clause 4.6 of the LEP.
- The additional floor space ratio allows for the dedication of 15% of the dwellings for Affordable Housing under the definition provided by the *SEPP Housing 2021*. This equates to 27 apartments and these dwellings will be owned/managed by a community housing provider for a period of no less than 15 years.
- For the reasons outlined above, the Clause 4.6 request is well-founded. Compliance with the floor space ratio development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the floor space ratio development standard should be applied.

2.0 Conclusion

The development will not result in unacceptable impacts with regard to the amenity of surrounding properties. The overall aesthetic appearance and scale of the development is compatible with the desired future character of locality.

Contextually, the proposal will provide a development of a density, height and form that appropriately responds to the sites' location within a B3 Core Commercial zone. The development responds to the desired and emerging Queanbeyan Town Centre streetscape and the arrangements of mixed use and commercial premises development in the vicinity of the site. The proposed height is commensurate with (less than) the recently approved Civic Centre building on the adjoining site and a Shop Top Housing Development recently approved in Crawford St, north of Monaro St.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses. In the context of the locality, it would be unreasonable for strict compliance to be enforced. It has been demonstrated that the proposal will promote the social and economic welfare of the community and the overall development will have positive outcomes for the urban aesthetic of the locality.

The proposal does not represent overdevelopment. Non-compliance is not considered to result in any precedents for future development within the locality or broader LGA, given the site considerations and surrounding pattern of development. It is concluded that the objection is well founded as compliance with the standards is both unnecessary and unreasonable.

The additional floor space ratio facilitates the provision of 15% of the dwellings within the development to be made available for affordable housing. This part of the development will be owned/managed by a community housing provider, and whilst the recent amendments to the *SEPP Housing 2021* due not apply to this development, the proposal does meet the development standards within the SEPP that now provide for an increase in 30% for Height and FSR where 15% of the development will meet the definition of Affordable Housing.

There is no public benefit to be derived, or planning purpose to be served, in requiring the proposed development to strictly comply with the applicable space ratio development standards of the of LEP 2022. This request demonstrates that there are sufficient environmental planning grounds for the proposed development to contravene the floor space ratio development standard applying to the subject land under Clause 4.4 of Queanbeyan Palerang Regional LEP 2022. This report has demonstrated that the development standard is unreasonable or unnecessary as the objectives of the standard are achieved despite the non-compliance with the standard. This report has also demonstrated that the 'unreasonable and unnecessary' requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development.

The Regional Planning Panel is therefore requested to exercise its discretion under Clause 4.6 of Queanbeyan Palerang Regional LEP 2022 and approve the proposed exceedance of the applicable floor space ratio development standard for the proposed shop top housing development, which includes 15% of the dwellings meeting the definition of Affordable Housing.