



CREATIVE**PLANNING**SOLUTIONS

Clause 4.6 Exceptions to Development Standards Written Request – Floor Space Ratio

Demolition of existing building and construction of a transitional group home development



1-3 Kemblawarra Road, Warrawong NSW 2502
Lot 1 in DP 1005758

Prepared for: Salvation Army Housing

Project No: F551

Date: September 2023

Creative Planning Solutions Pty Limited
Level 3, 397 Riley Street, Surry Hills NSW 2010 | 1/6 Tilley Lane, Frenchs Forest NSW 2086
PO Box 1074 Broadway NSW 2007
+61 2 8039 7461 | info@cpsplanning.com.au | www.cpsplanning.com.au
Creative Planning Solutions Pty Limited – ABN: 70 135 093 926

Document Control

Creative Planning Solutions works to a stringent Quality Assurance Program.

If this document has not been signed for review and approval then it is deemed a preliminary draft.

Prepared by:




Ellen Timmins

Reviewed by:



Sonya Constantinou

Authorised by:



Daniel Govers

© Copyright CREATIVE PLANNING SOLUTIONS PTY LIMITED 2023

This document is copyrighted; reproduction of this document or any part thereof is not permitted without prior written permission of Creative Planning Solutions Pty Limited.

Disclaimer:

In preparing this document, Creative Planning Solutions has relied upon information and documents provided by the Client or prepared by other Consultants within their various areas of expertise.

Creative Planning Solutions is unable and does not accept responsibility for any errors or omissions in any of the material provided by other parties.

Contents

1.0	Introduction	4
2.0	Clause 4.6 Written Request.....	5
2.1	Details of development standard sought to be varied	5
2.2	The statutory obligations of the applicant and Council	6
2.3	Assessment against Clause 4.6	7
3.0	Conclusion	14

1.0 Introduction

Creative Planning Solutions ('CPS') has prepared this report on behalf of Salvation Army Housing ('the Applicant'), as part of the submission of a Development Application ('DA') to Wollongong City Council ('Council') for the demolition of existing building and construction of a transitional group home development at 1-3 Kemblawarra Road, Warrawong ('the site').

Contained within this report is the written request relating to the proposed variation to Clause 4.4 of the *Wollongong City Council Local Environmental Plan 2009* (WLEP 2009) in accordance with the provisions of Clause 4.6 of the WLEP 2009.

Table 1: Summary Details

Applicant's Name	Salvation Army Housing
Site Address	1-3 Kemblawarra Road, Warrawong NSW 2502 Lot 1 in DP 1005758
Proposal	Demolition of existing building and construction of a transitional group home development
Environmental Planning Instrument	<i>Wollongong City Council Local Environmental Plan 2009</i> (WLEP 2009)
Development Standard to be Varied	Clause 4.4 – Floor Space Ratio

2.0 Clause 4.6 Written Request

2.1 Details of development standard sought to be varied

Clause 4.4 of the WLEP 2009 prescribes the maximum floor space ratio (FSR) for land to which the plan applies. The provisions of clause 4.4 are reproduced below:

4.4 Floor space ratio

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
 - (b) *to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,*
 - (c) *to ensure buildings are compatible with the bulk and scale of the locality.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

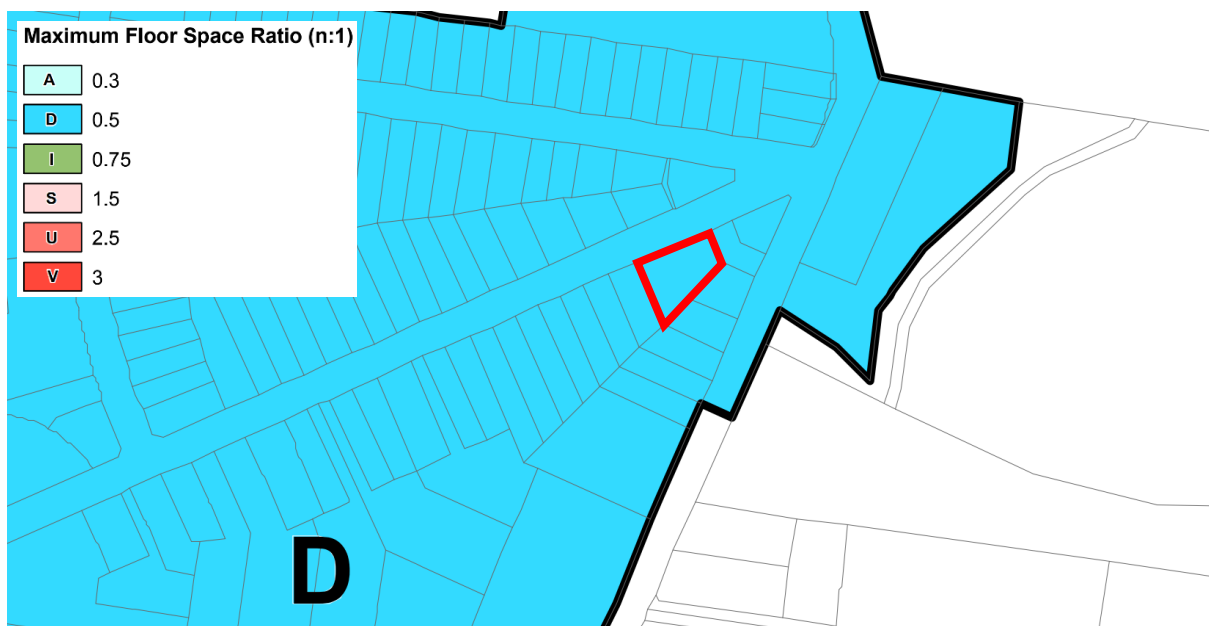


Figure 1 Extract of WLEP 2009 Floor Space Ratio Map, subject site outlined in red

Source: <https://www.legislation.nsw.gov.au>

The Floor Space Ratio Map (Figure 1) prescribes a maximum FSR of 0.5:1 for the subject site. The site comprises an irregular shaped allotment orientated in a north-west to south-east direction with an area of 1,507m² (source: Detail Site Survey). The proposed development seeks to provide ten (10) transitional group homes on the site. The group homes are comprised within three (3) interconnected, two (2) storey buildings, with a gross floor area of 868m², reflective of an FSR of 0.576:1. This reflects a variation of 15.2%, or 114.5m².

The site fronts Kemblawarra Road to the north-west and comprises a single storey group home with a single existing vehicular access from Kemblawarra Road, adjacent to the western boundary of the site, providing access to a hard-surfaced car parking area. The site is relatively flat, with a slight fall of 0.7m towards the western corner of the site.

The site is bound by R2 zoned residential development. Land further to the south and south-west of the site is zoned E4 General Industrial and E5 Heavy Industrial. As such, larger scale developments are commonplace in the vicinity of the site along Shellharbour Road, as well as along King Street (in zone E3 Productivity Support) further to the west (Figure 2).

The GFA proposed for the site represents a contemporary development that provides modern purpose-built accommodation that will provide a temporary refuge for women and children escaping domestic violence. It will be operated and staffed by The Salvation Army.

The development has been designed to include high quality landscaped setbacks to the street and site boundaries, with a generous area of communal open space and planting beds for shade tree planting and layered mass planting. The bulk and scale of the proposed development has been separated into three distinct but interconnected buildings fronting Kemblawarra Road, and is consistent with the desired future character of Warrawong.



Figure 2 Site location plan, illustrating character of locality (subject site outlined in red)

Source: Architectural Plans, Baumgart Clark Architects

2.2 The statutory obligations of the applicant and Council

The authority established within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, provides that a clause 4.6 variation need not establish that a development containing a variation provides a better or even neutral outcome for a development site compared with that which would be provided by a compliant development.

Considering this judgement, it is also necessary to distinguish between the obligations of the applicant, and the obligations of Council. The applicant is required only to address the matters required by clause 4.6(3). Note however, that for completeness and to assist Council in its assessment, this variation request has addressed clause 4.6(3) and clause 4.6(4). However, given the inevitable overlap between these matters, this request should be read in its entirety as generally fulfilling the applicant's obligations as they are prescribed by clause 4.6(3).

2.3 Assessment against Clause 4.6

Clause 4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe V Pittwater Council (2007) NSW LEC 827*, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded.

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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

(Emphasis added)

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above points. In this instance point 1 is investigated and considered well founded for the proposed development.

The objectives of the floor space ratio development standard under clause 4.4 of WLEP 2009 are provided below, and followed by a response on how that objective is achieved notwithstanding noncompliance with the standard:

(a) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

CPS response: The FSR standard prescribed for the site is 0.5:1 pursuant to clause 4.4 of WLEP 2009. Based on a site area of 1,507m², a maximum gross floor area (GFA) of 753.5m² can be achieved for the site. The proposal seeks a GFA of 868m², reflective of an FSR of 0.576:1.

The development proposed for the site is considered to provide an appropriate correlation between the size of the site and the extent of built development proposed, on the basis that:

- The site significantly exceeds the minimum lot width required by the Wollongong Development Control Plan 2009 (DCP) by over 30m, or 171%.
- Generous site setbacks have been provided which meet or exceed the required DCP standards.
- Over 30% of the site is provided as landscaped area, in accordance with the DCP. This landscaped area provides for the planting of additional significant vegetation including canopy tree planting along all four site boundaries. This includes twenty-eight (28) new trees and palms, resulting in a significant increase in tree cover compared to the existing situation, which will be further supplemented with continuous areas of dense layered mass planting of hedges, shrubs, and accent planting.

(b) to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,

CPS response: As above, the proposal provides an appropriate correlation between the size of the site and the extent of built development proposed, resulting in an appropriate density and intensity of land use.

Furthermore, the site has been used as a transitional group home for many years, with DA approval being first granted for the use in 1998, and the new development will not significantly increase demand on existing infrastructure. The development will be staffed and operated by The Salvation Army, who provide client-focussed service to residents, and there will be no increase in demand on public infrastructure as a result of the development.

The site is also within walking distance of the Warrawong Plaza Shopping mall which provides essential services such as supermarkets, a grocery store and a pharmacy, as well as walking distance to bus stops at Shellharbour Road and King Street.

The proposal is therefore commensurate with the capacity of existing infrastructure for the locality despite the minor variation to the FSR.

(c) to ensure buildings are compatible with the bulk and scale of the locality.

CPS response: In terms of the locality, the site and surrounding area is in the suburb of Warrawong. Chapter D1 'Character Statements' of the DCP aims to identify the existing character and desired future character for each suburb within the city of Wollongong, in order to:

- a) Protect and enhance the existing character that distinguishes the identity of each suburb within the city; and*
- b) Provide character statements for each suburb within the city which in conjunction with the specific development controls outlined in other chapters of this DCP will help assist decision-*

making as to whether a proposed development is compatible with the desired future character of the locality/suburb.

The DCP states that “character” has two specific elements, namely:

- (i) *“Existing character” relates to the current patterns of natural and urban geography which may be observed in an area; and*
- (ii) *“Desired or future character” which provides objectives for the future development of a suburb and which emphasizes the important existing features or qualities of the area that should be maintained or enhanced.*

In this regard, the desired future statements contained in Chapter D1 of the DCP express *“the character and outcomes sought for a suburb”*, and the DCP notes that *“these statements will focus on the future, and as such recommendations are likely to differ from what exists in the neighbourhoods and suburbs currently.”*

Section 3.41 of Chapter D1 of the DCP describes the character of Warrawong as follows:

Existing Character

Warrawong is located on the north-eastern side of Lake Illawarra.

Warrawong residential area is characterised by low to medium density housing and comprises predominantly of older single storey and two storey brick and weatherboard detached dwelling-houses with some medium density housing, including townhouses and walk up residential flat buildings. In this regard, Warrawong also contains one of the highest concentrations of public housing stock in the Wollongong Local Government Area.

(...)

Desired Future Character

Warrawong is likely to experience an increase in redevelopment activity in the form of larger two storey dwellings as well as some medium density housing, particularly for properties with views towards Lake Illawarra. The upgrading of older housing stock is also likely to occur, given that Warrawong is a relatively affordable suburb and is well located in terms of access to retail and business services.

A range of dwelling styles and external finishes are acceptable for this suburb with moderately pitched hipped roof forms being preferred. Additionally, any new medium density housing should be of face brickwork or a mix of rendered brickwork and face brick and a pitched hipped roof form.

(...)

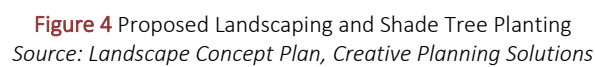
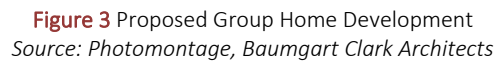
The development proposed on the site is compatible with the description of the desired future character for Warrawong as described in section 3.41 of the DCP. The proposal is for a two-storey group home development that will upgrade the existing older group home on the site. The design incorporates a suitable palette of external finishes, including a combination of face brick and external cladding. The bulk and scale of the proposed development has been separated into three distinct but interconnected buildings, each with a moderately pitched gable roof.

The discussion above demonstrates that the proposed development is compatible with the surrounding residential environment, as established by the planning principles within *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. These principles determined that compatibility is not about 'sameness' but rather about a proposal's ability to exist in harmony with its surroundings. Compatibility also relates to the acceptability of a proposal's physical impacts on surrounding development. With determining the proposal's compatibility with the locality, the two tests used in Senior Commissioner Roseth's findings are as follows:

Test 1 - Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The desired future character of the locality has been described above, and is summarised as larger two storey dwellings and medium density housing, with a range of dwelling styles and external finishes, and a preference for pitched hipped roof forms. The proposed FSR variation will have no impact on building height or site coverage, which is compatible with the streetscape and complies with the DCP.

The proposed building height and massing complies with WLEP 2009 and the DCP. The proposal will present as a modern two-storey development to the street, separated into three distinct but interconnected buildings, each with a moderately pitched roof (Figure 3). This is supplemented by the proposed site landscaping which enhances the amenity on site for residents and the overall streetscape (Figure 4). The building materials and design are compatible with the existing streetscape, whilst providing a modern and contemporary scheme that will be in harmony with the future character of the locality as older housing stock continues to be upgraded.



Test 2 - Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The amenity of surrounding properties will not be significantly impacted as a result of the proposed development. The proposed development provides character to the streetscape and will enhance the amenity of the immediate streetscape. The development has been thoughtfully designed to minimise any physical impacts on the surrounding sites. The proposal will not result in an undue overshadowing impact to neighbouring residential properties.

Furthermore, the site coverage of the proposed development is similar in scale to the existing building on site, and will provide for additional landscaping compared to the existing situation.

In summary, the bulk and scale of the development will be compatible with the existing and desired future character of the streetscape and wider locality. The proposal therefore satisfies objective (c) of WLEP 2009 clause 4.4.

Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

The environmental planning grounds to justify contravention of the development standard are detailed as follows:

1. No significant or unreasonable impacts on surrounding public areas

The proposed increases to the site's FSR will have no adverse or unreasonable impacts on the amenity of the public domain for the reasons outlined earlier in this written request.

The minor FSR variation is considered acceptable given the development is still provided with ample amenity given the generous landscaped area proposed, which is complemented by substantial communal open space.

The external façade of the building will provide an improved outlook to the streetscape which is consistent with the desired future character of the locality.

2. No significant or unreasonable impacts on surrounding residences

The proposed built form on the site will not significantly nor unreasonably affect adjoining and nearby residences to the north-east, south-east and south-west of the subject site in terms of visual privacy, overshadowing and visual amenity.

3. Improvements to site layout and functionality

The proposal will provide modern purpose-built accommodation that significantly increases the amenity and liveability of the site for women and children requiring refuge, whilst reflecting the desired future character of the area.

Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

In the recent judgement within *Initial Action*, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within clause 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

The objectives of the R2 Low Density Residential zone under WLEP 2009 are as follows:

- ***To provide for the housing needs of the community within a low density residential environment.***

CPS Response: The proposed development achieves this objective, as it will provide modern purpose-built accommodation which will provide for the housing needs of the community. The development will ensure housing diversity in the form of a new group home development, whilst being compatible with the low-density residential character of the immediate area. As detailed above, the bulk and scale of the development is compatible with existing surrounding residential development, and consistent with the desired future character of the wider locality.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

CPS Response: The proposal, whilst it is a group home, is also a valuable service that provides temporary refuge and support services for women and children escaping domestic violence. The proposal will also not have a detrimental impact on the ability of surrounding sites to provide facilities or services to meet the day to day needs of residents.

3.0 Conclusion

The proposal seeks to provide a two (2) storey group home development that will provide a temporary refuge for women and children escaping domestic violence, in new modern purpose-built accommodation. The development will replace the older group home housing stock on the site and improve housing diversity in the locality, with a built form that is compatible with the existing character of the streetscape, whilst significantly increasing the amenity and liveability of the site for future residents.

The development includes high quality landscaped setbacks to the street and site boundaries, with a generous area of communal open space and planting beds for shade tree planting and layered mass planting. The bulk and scale of the proposed development has been separated into three distinct but interconnected buildings fronting Kemblawarra Road, and is consistent with the desired future character of Warrawong. Accordingly, the variation to the FSR development standard is considered acceptable in this instance.

Through the application of tests derived through the relevant caselaw, this assessment confirms that the proposal is both in harmony and compatible with the existing and desired future character of the surrounding residential development, and will not result in significant or unreasonable physical impacts to surrounding sites; the proposal is therefore considered to be acceptable.

Despite a breach to the FSR development standard, the development provides an appropriate design response with regard to the locality and constraints of this site. Aside from presenting a suitable appearance to surrounding areas, that is compatible with the existing and desired character of the area, the proposed development will enable better utilisation of the site, without causing any significant nor unreasonable impacts on surrounding sites or the public domain, in terms of visual privacy, solar access and/or visual amenity.

Compliance with the FSR development standard is unreasonable and unnecessary in the specific circumstances of this proposal, and there are sufficient environmental planning grounds to justify contravention of the FSR development standard. Given the above, the Applicant's statutory requirements pursuant to clause 4.6 of WLEP 2009 are satisfied, and the variation to the floor space ratio development standard can be approved by Council.