

# Northern Development Assessment

**CLAUSE 4.6 REQUEST FOR VARIATION OF THE FLOOR SPACE RATIO STANDARD  
FLOOR SPACE RATIO STANDARD UNDER CLAUSE 4.4 OF  
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

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**TO ACCOMPANY  
DEVELOPMENT APPLICATION**

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**FOR  
PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL DWELLING**

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**AT  
77 CASTLE CIRCUIT, SEAFORTH  
LOT 33 DP 200638**

Prepared By

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## Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

### 1.0 INTRODUCTION

This request is made under the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013).

This Clause 4.6 Request has been prepared in relation to the Floor Space Ratio (FSR) Standard under Clause 4.4A of LEP 2013 in support of a Development Application (DA) seeking approval for “alterations and additions to an existing residential dwelling” on the property known as 77 Castle Circuit, Seaforth (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the FSR Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the FSR Standard.

Clause 4.6 of LEP 2013 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

#### **4.6 Exceptions to development standards**

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

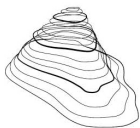
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(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 for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard 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.*

(4) *Development consent must not be granted for development that contravenes a development standard unless—*



#### **Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**

*(a) the consent authority is satisfied that—*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (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, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.*

*(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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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.*

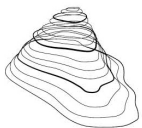
*Note—*

*When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.*

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

*(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,*
- (ca) clause 6.15,*
- (cb) a development standard on land to which clause 6.19 applies.*



## Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

*“[63] It is clear from a reading of cl 4.6 of LEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the two development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).*

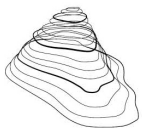
*[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:*

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i)).”*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council* [2001] NSW LEC 46, *Wehbe v Pittwater Council* [2007] NSW LEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90, and *Moskovich v Waverley Council* [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2013.

I note that the FSR Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2013.



## 2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

### 4.4 Floor space ratio

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

(a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

(b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

(c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

(d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

(e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

(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](#).*

(2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

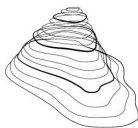
#### **Comment:**

I note that the subject site contains residential dwelling located on a lot with a Site Area of 562.6m<sup>2</sup> which is significantly below the minimum lot size of 1150m<sup>2</sup> identified under the LEP. The subject site has an FSR Standard of 0.4:1 allowing for a Gross Floor Area of 225m<sup>2</sup>. The existing dwelling on the subject site has a Gross Floor Area of 266.1m<sup>2</sup>.

Based on the calculations provided on the plans accompanying this DA, I note that under the proposed alterations and additions, the Ground Floor area remains unchanged. The additional floor area comes as a result of the following;

- Minor 2.38m<sup>2</sup> extension at Level 1.
- Minor 9.12m<sup>2</sup> extension at Level 2 to provide access from the proposed lift into the Living Room and a minor 5.5m<sup>2</sup> extension to provide a new entrance.
- New Level 3 for the Parent's Lounger resulting in an additional 21.4m<sup>2</sup> of floor area.

The above additions result in a Gross Floor Area of 304.53m<sup>2</sup> which provides an FSR of 0.54:1. I note that this results in a breach of the FSR Standard by 35%. I should note that the Court has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard.



## Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

The proposed alterations and addition therefore require the submission of a Clause 4.6 Variation Request for Council to assess the reasonableness of the breach.

I note that as contained within Council's DCP Clause 4.1.2.1- Exceptions to FSR for Undersized Lots, "*the undersized nature of a lot is a matter that Council may consider in determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case*" and "*there is sufficient environment planning grounds to justify contravening the development standard*" under LEP clause 4.6(3)." For the reasons outlined in this Clause 4.6 request and accompanying SEE, I consider that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and that there is 'sufficient environmental planning grounds to justify contravening the Development Standard.'

I note that Clause 4.1.3.1(a) of Council's DCP advises that "*The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.*" I note that Figure 30 does not identify Area B within this table as restricting the maximum variation.

Furthermore, I note that under DA 104/2016, Council approved an FSR of 0.6:1 at 75 Castle Circuit which has a comparable lot size and similar topography, advising that this breach was "*within the allowances for it in the Manly DCP Clause 4.1.3.1 Exceptions to FSR for Undersized Lots.*"

This Clause 4.6 Request seeks to demonstrate that compliance with the FSR Development Standard is unreasonable or unnecessary by reference to the first test in *Wehbe*, that is that the objectives of the standard are achieved notwithstanding the non-compliance with the FSR Development Standard.

**3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD**

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the R2 Low Density Residential Zone.

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

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Comment:**

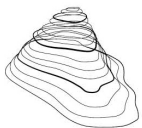
The proposal is consistent with the objectives of the R2 Low Density Residential zone, assisting in providing for the housing needs of the community within a low density residential environment.

The proposed alterations and additions comply with the relevant Objectives of the R2 Zone as follows;

- The proposed alterations and additions will provide for improved parking and access to the site, whilst removing traffic from the single lane shared driveway and providing additional off-street parking. Furthermore, the proposed alterations and additions will provide improved accessibility throughout the site through the introduction of the lift.
- The proposed alterations and additions result in an improved bedroom and living area within the residential dwelling. The improved bedroom and living area serve the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed alterations and additions ensure that the existing residential form of housing is retained, allowing for improved amenity for current and future occupants of the subject site without any unreasonable amenity impacts to adjoining properties.
- The proposed alterations and additions ensure the residential dwelling remains sympathetic to the existing streetscape. These design elements ensure that the proposed development, when viewed from the street complements the identified streetscape.

Based on Clause 4.4 of LEP 2013, the relevant Objectives of the FSR Standard for buildings in Zone R2 – Low Density Residential zone are as follows:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*





#### Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*
- (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.*
- (2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

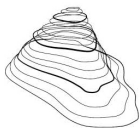
#### **Comment:**

The FSR Standard applicable to the subject site is 0.4:1 pursuant to Clause 4.4 under LEP 2013.

The FSR of the proposed development is 0.54:1, based on the advice of the Architect for the proposed development. The breach is approximately 35% over the maximum FSR Standard.

Despite the breach of the FSR Development Standard, I consider that the proposed alterations and additions comply with the following relevant objectives of this clause;

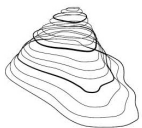
- The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.
- The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
- The proposed alterations and additions which increase the gross floor area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed.





#### **Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**

- The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.



## Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

### 4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

For the reasons outlined in this Clause 4.6 Request and the accompanying SEE, I consider that the compliance with the FSR Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

The steps to considering in assessing whether compliance with the FSR Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe* at [45].
3. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe* at [46].
4. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe* at [47].
5. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
6. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

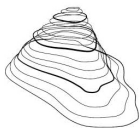
For the purposes of this request, it is my opinion that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are

## Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

achieved, notwithstanding non-compliance with the standard, consistent with the “first way” as set out in Step 3 above.

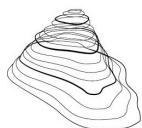
I wish to particularly note the following points: -

- The proposed development is consistent with the relevant objectives of the FSR development standard expressed by clauses 4.4 LEP 2013.
- The proposed development achieves the relevant Objectives of the R2 Low Density Residential zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the FSR development standard was applied as the development satisfies the objectives or purpose of the FSR standard, despite the non-compliance. The development allows a more efficient use of land and provides for improved living areas and access throughout the existing dwelling, contributing to the variety and availability of housing types in the area.
- For the reasons outlined in the accompanying SEE and this Clause 4.6 Request, I consider that the proposed development results in a range of Positive Outcomes:
  - i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
  - ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
  - iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
  - iv. The proposed alterations and additions which result in an increase in Gross Floor Area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the additional Gross Floor Area.



#### **Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**

- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



## Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

### 5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

For the reasons outlined in this Clause 4.6 Request and the SEE, I consider that there are strong environmental planning grounds to justify variation of the FSR Standard.

The adjectival phrase “*environmental planning grounds*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene the development standard.

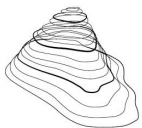
In *Initial Action* the Court found at [23]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “*environmental planning grounds*” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “*environmental planning*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.
24. 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].

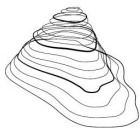
For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the FSR Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the FSR Standard:



#### Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
- iv. The proposed alterations and additions which increase the Gross Floor Area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the additional Gross Floor Area.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



**6.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD**

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.

**Would non-compliance raise any matter of significance for State or regional planning?**

The non-compliance does not raise any other matter of significance for State or regional planning.

**Is there a public benefit of maintaining the development standard?**

I consider that there is no public benefit associated with maintaining strict compliance with the development standard;

- The proposed development results in a range of positive outcomes as outlined in this Clause 4.6 Request and accompanying SEE.
- The breach of the FSR Standard does not result in any unreasonable environmental impacts.
- The proposed alterations and additions are of an attractive palate of colours and materials.
- I consider that, when viewed from the street, the proposed alterations and additions will result in an improvement in the visual aesthetics of the existing building.

**Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

The contravention of the FSR Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.



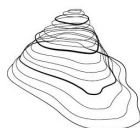
## **7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?**

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the FSR development standard and Objectives of the R2 Low Density Residential Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the FSR non-compliance.

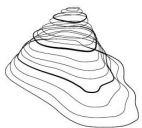
I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE. I again note the range of positive outcomes which are listed below:

- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
- iv. The proposed alterations and additions which increase the gross floor area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the additional Gross Floor Area.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.



#### **Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**

- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



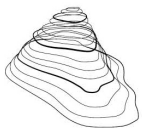
## **8.0 CONCURRENCE OF DIRECTOR GENERAL**

- (4) Development consent must not be granted for development that contravenes a development standard unless—*
- (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.*

**Comment:**

The Department issued Planning Circular No. PS18-003 (dated 21<sup>st</sup> February 2018) which notified Council of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument...”

Clause 64 of the EPA Regulations provide that Council may assume the Director General’s [Secretary’s] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

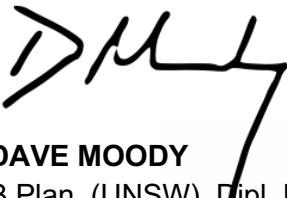


## **9.0 CONCLUSION**

Notwithstanding the breach of the FSR Standard, I consider that this request for variation of the FSR Standard is well founded.

I consider that the proposed development, notwithstanding the breach of the FSR Standard, will not have an unreasonable adverse impact on adjoining properties or the public domain and will result in a range of Positive Outcomes outlined in this Clause 4.6 Request and the accompanying SEE.

For the reasons provided within this Clause 4.6 request and accompanying SEE, variation of the FSR is supported. The Clause 4.6 request has adequately addressed the matters required under clause 4.6 of LEP 2013. Furthermore, it has been established that the proposed development would be in the public interest as it is consistent with the objectives of the FSR Development Standard and the Objectives of the R2 Low Density Residential Zone.



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