



CLAUSE 4.6 VARIATION TO THE FSR DEVELOPMENT STANDARD

Demolition, substantial alterations & additions to the dwelling house, new garage and studio

13 Amiens Road, Clontarf

Prepared on behalf of

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (DA) proposing demolition works, substantial alterations and additions to the existing dwelling house, a new garage and studio below, retention of the existing swimming pool and its surrounds, landscaping and other required site works at 13 Amiens Road, Clontarf (the **site**).

Calculations in this submission are based on plans and information provided by Case Ornsby Architecture. This submission should be read in conjunction with all documentation submitted with the DA.

As noted in the separate SEE, by LPDS, the proposal departs from the FSR standard at Clause 4.4 of Manly Local Environmental Plan 2013 (**LEP 2013**), triggering the requirement for the preparation of a Clause 4.6 Exception to Development Standards submission.

As required pursuant to Clause 4.6(3) of LEP 2013, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's departure from the FSR development standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (**NSW LEC**) judgements.

2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

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

Manly Local Environmental Plan 2013 (LEP 2013).

2.2 What is the zoning of the land?

The land is zoned R2 Low Density Residential.

2.3 What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- 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.

2.4 What is the development standard being varied?

Development Standards' are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) ***the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,***
- (d) ***the cubic content or floor space of a building,***
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*

- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed. (my emphasis)*

The FSR control at Clause 4.4 of LEP 2013 is clearly a development standard as it relates to:

- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work as specified by **subclause (c)**; and
- the cubic content or floor space of a building as specified by **subclause (d)**.

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

Yes, as it contains objectives to which compliance with the standard is targeted to achieve.

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

The FSR development standard is listed at Clause 4.4 of LEP 2013.

2.7 What are the objectives of the development standard?

The objectives of the FSR development standard are expressly stated at Clause 4.4(1) of LEP 2013 and are:

- (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 Zone E1 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.*

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

Clause 4.4(2) of LEP 2013 establishes a maximum 0.4:1 FSR. Based on a site area of 967m², this equates to a gross floor area (GFA) of 386.8m².

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

GFA calculation diagrams by Case Ornsby Architecture are submitted separately.

The altered dwelling house and the new (rebuilt) garage / studio has an overall GFA of 426.67m² or an FSR of 0.44:1.

It is noted that although the overall proposal departs from the standard and as two separate built forms are proposed, the GFA / FSR of the altered dwelling house (354.07m² / 0.37:1) if calculated in isolation would comply with the standard. The resultant GFA of the studio (below the garage) is the built form which triggers the departure from the standard.

Additionally, it is noted the proposed FSR of 0.44:1 is the same as that previously approved under DA 2020/189.

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

The proposed percentage variation is 10% or 39.87m².

3.0 ASSESSMENT OF THE PROPOSED VARIATION

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

3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2013, the objectives of the R2 Low Density Residential zone are:

- 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.

The site may be developed with the stated variations to the FSR standard. Consistency is not readily quantifiable in absolute numerical terms. The proposal despite its departure from the FSR development standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site as it:

- maintains the existing dwelling house on an existing low density residential allotment of land;
- provides flexible accommodation for a family through the provision of the studio below the new double garage;
- maintains the existing subdivision pattern and therefore the existing allotment density within an established residential locality;
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain. The environmental amenity of the neighbours has been preserved;
- maintains and enables a built form that is not incompatible with the existing and likely future built form context;
- undertakes works which are not visually intrusive or bulky when viewed from the surrounding public domain and maintains a built form that sits comfortably within the site's locational built form context.
- is located on a site of sufficient size to appropriately accommodate the overall built form; and
- the occupants of the dwelling can work from home as/if required and utilise other land uses that provide facilities or services meeting their day to day needs. There is no identifiable impact to other local centres or non-residential precincts.

3.1.2 Objectives of the FSR standard

The proposal despite its departure from the FSR standard is nonetheless consistent with the relevant objectives and therefore provides an appropriate planning outcome for the following reasons:

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

Objective (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

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

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

- The FSR standard departure and the development generally is not inconsistent with the relevant objectives of the FSR standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor does it alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.
- A single dwelling house plus a separate studio on an existing low density residential allotment of land is maintained. This low density built form and land use is desired by the site's and surrounding locality's R2 Low Density Residential zoning.
- As two distinct and separate built forms are maintained / proposed the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The garage / studio is the same envelope / form previously approved under DA 2020/189.
- The surrounding locality is characterised by multi level elevated dwellings set on typical allotments of land influenced by the locality's topographical characteristics and mature/thick vegetation. A variety of housing types and architectural styles are provided within a varied subdivision pattern that is influenced by the locality's topographical variations (falling from east to west or front to back). The integrity of individual dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically adjusted to the natural topography and are oriented to take advantage of their westerly views and vistas. As demonstrated by **Figures 5 and 6** in the SEE, the altered dwelling house and its surrounds is not incompatible considering its established and likely future built form context, including that proposed and as previously approved under DA 2020/189.
- The scale of the proposal is characterised by the desired future character for the area. The height, bulk and scale of the built form does not influence or set a precedent for future buildings along the western side of Amiens Road. This is aptly demonstrated at **Figures 5 and 6** in the SEE.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 (see **Figure 17** in the SEE).
- The building volume has been designed to be articulated, and to facilitate a contextually appropriate massing. The elevations are articulated in response to the form and size of the dwelling. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating contemporary materials and an architectural aesthetic;
- The proposal conforms to and reflects the site's natural landforms. Excavation whilst proposed is not excessive and FFL's for the dwelling remain unaltered and are the same as that previously approved for the garage / studio under DA 2020/189.
- Essentially, the objective of an FSR standard is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum FSR that a site can achieve is determined by its environmental constraints. The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built

form without an adverse visual impact or perceived built form dominance. The departure to the FSR standard has been arranged considering the neighbouring and nearby context and the desire to fill the missing tooth. In this regard and as demonstrated by the DCP 2013 assessment at **Table 5** and Section 4.2 of the separately submitted SEE, the proposed to be altered built form nonetheless maintains environmental amenity in relation to:

- solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- The quantum of additional floor space (above the FSR standard and specifically relative to the garage / studio) is arranged on the site in a manner that does not result in adverse impacts upon neighbouring properties or the public realm by way of overshadowing, visual massing, view impacts (vistas improved from the surrounding public domain because of the built form's siting) or visual and acoustic privacy.
 - As demonstrated on the Sections within the Architectural Drawings (submitted separately) and although if calculated in isolation, the dwelling would comply with the standard and it includes existing / proposed GFA within the lower ground floor level. The numerical departure from the standard is therefore inconsequential from a planning perspective as it does not perceptibly add to the overall built form's impacts. This is a common design feature/element for hillside properties, such as the site as it 'benefits' from sloping land which enables appropriate excavation to additional subterranean floorspace. These areas are generally screened from the public domain by the sandstone or similar structure retaining walls as well as established perimeter landscaping. These areas are generally not visible from the surrounding public domain and where they are visible, they form the common design element of the base, the body and the top of the dwelling.
 - Existing and proposed landscaping across the site ensures there is no visual built form dominance, when viewed from the surrounding public domain (Amiens Road, Clontarf Point or the harbour). The visual character between the new development and existing locality landscape will not fundamentally be altered. While the garage at the street frontage is to be larger than the existing structure (albeit as approved under DA 2020/189), existing canopy trees in the street verge will still dominate the visual character of the public domain. The altered dwelling will not readily be discernible from the public domain as it is positioned substantially lower than the street level. The altered and proposed built form exhibits architectural design excellence and an improved landscape condition, a desirable planning and built form outcome.
 - The proposed built form and landscape character is not dissimilar to other buildings in the surrounding locality. In this regard, significant landscaped areas are retained which maintain the locality's landscape and scenic quality/characteristics. Substantial areas of unrestricted deep soil landscaping are proposed promoting infiltration and absorption. The proposed landscaping does not result in the loss of any mature vegetation (worthy of retention) with vegetation retained where practical and high quality, durable and appropriate planting is proposed relative to the site's location and neighbours. The overall design and siting of the useable landscaped area provides for superior residential amenity for the occupants.;

- It provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant.
- The dwelling is surrounded by substantial private gardens/landscaped areas reducing its visual impact or visual connection with the surrounding public domain.
- The dwelling's actual bulk and scale when viewed from the surrounding public domain is a built form which is generally expected given the site's prestigious waterfront hillside Clontarf Point location.

Objective (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

- Whilst this objective is not technically relevant to the proposal given the site's R2 Low Density Residential zoning, the proposal's positive impacts relative to land zoned for business purposes includes:
 - the population on the site will continue to patronage facilities within the surrounding centres and villages, a desired outcome. The proposal otherwise has no identifiable impact on the viability of local centres or villages;
 - it maintains residential housing on a residential allotment within the Northern Beaches LGA;
 - construction will provide temporary employment opportunities;
 - the promotion of the locality as a desirable place to live and work;
- The provision of housing close to public transport, employment opportunities and services, will provide good quality accommodation that is suitable for the intended occupants encouraging equal access to public amenities. The dwelling has been designed to cater for a family household. This enriches residential diversity. A well-designed and socially responsive development will always attract a socially diverse mix of people and in turn improve and enhance for a much richer community life in the area.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development at 13 Amiens Road, Clontarf, that strictly complies with the 0.4:1 FSR standard is unreasonable or unnecessary given the following presented circumstances:

- As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls and is similar to that previously approved under DA 2020/189.
- The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. Its design and siting is the same as that previously approved under DA 2020/189.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 and remains highly articulated and visually interesting.

- The altered and proposed built form exhibits architectural design excellence and an improved landscape condition, a desirable planning and built form outcome.
- The quantum of additional floor space (above the FSR standard and the studio specifically) is arranged on the site in a manner that does not result in any unreasonable environmental or amenity impacts to neighbours or the public realm;
- A similar building envelope / alignment is proposed as that previously approved. Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.
- The altered / propose built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- The additional FSR does not result from excessive site disturbance or excavation, rather the enlargement of the existing lower ground floor level and the enlargement of the studio below the garage. All existing FFL's (dwelling) and those approved (garage / studio) remain unaltered.
- Alterations and additions are proposed to an existing three storey dwelling. A two storey garage and studio replaces an existing two storey garage and separate storage level built form. The built form is therefore relative to storeys essentially no different to that existing, although relative to overall height, the dwelling is less than that existing.
- Following a rigorous merit based assessment, approval of a building envelope that relates to the locality's existing character but which exceeds the LEP 2013 development standard, will not set a precedent for other non-conforming applications, particularly considering the overall building envelope is not dissimilar to that previously approved under DA 2020/189.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance. The departure to the FSR standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at **Table 5** and Section 4.2 of the separately submitted SEE, the departing built form nonetheless preserves environmental amenity in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- Numerous nearby dwellings will also depart from the relevant FSR standard.
- Within this context, it is clear the site can accommodate the FSR proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality, including neighbouring and nearby properties.
- The overall FSR will not preclude (and hasn't done so in the past) redevelopment of neighbouring and nearby properties.

In ***Wehbe v Pittwater Council [2007] NSWLEC 827***, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

Are the objectives of the standard achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the objectives of the FSR standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the current and likely future planning controls.

On this occasion (and as demonstrated at **Table 4** and Section 4.2 of the separately submitted SEE) the non-compliance better achieves the objectives by allowing for an architecturally altered dwelling (which complies when viewed at in isolation) that enables high (improved) internal amenity for the occupants whilst reasonably maintaining the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbours. Additionally it permits the construction of the new garage / studio entirely consistent (envelope, form, siting etc) with that previously approved under DA 2020/189.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

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

Compliance with the underlying objective of the 0.4:1 FSR standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason and would be impractical considering the approval of DA 2020/189, which remains current.

The resultant built form is one that exhibits substantial merit relative to architectural design and an embellished landscape condition. It includes appropriate environmental initiatives and has a positive built form relationship with its neighbouring and nearby elevated multi level built form.

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

A review of Council's Clause 4.6 Variations Register (1 January to 31 March 2023 being the most recent), demonstrates that the FSR standard cannot said to be abandoned.

However, and notwithstanding the non-abandonment of the standard, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (former Manly) that are zoned R2 Low Density Residential that depart from the current LEP 2013 FSR standard and others. The site's previously approved and still current DA 2020/189 departed from the LEP 2013 FSR standard.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location. Large (including traditional and modern and contemporary) elevated multi level dwellings are found on neighbouring and nearby properties.

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

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the FSR standard as required by clause 4.6(3)(b) of LEP 2013.

It is noted that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Additionally, it is noted that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposal at 13 Amiens Road, Clontarf, the particular circumstances of this case distinguish it from others and therefore there are sufficient environmental planning grounds to justify contravening the FSR standard being:

- The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the contravention to the FSR standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context.
- The proposed FSR is essentially the same as that already considered environmentally acceptable under the approved DA 2020/189.
- As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls.
- The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The envelope, design and siting of the garage / studio is the same as that previously approved under DA 2020/189.
- A similar building envelope / alignment is proposed as that previously approved. Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.
- The altered / proposed built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.

- The proposed breach of the standard results in an improved amenity outcome for the residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form. This includes the provision of open plan primary living areas with direct connections to useable external private open space areas.
- The proposal provides for enhanced amenity to the residents through alterations and additions to the existing built form through a relatively modest increase in GFA without any unreasonable impact to neighbouring properties and the surrounding public domain. The alterations and additions to the dwelling are well scaled and reduced its overall height. The new works are contemporary in form and detail and are not visually intrusive or bulky when viewed from the surrounding public domain and are not incompatible with the established built form context at the rear of neighbouring properties.
- The additional FSR does not result from excessive site disturbance or excavation, rather the enlargement of the existing lower ground floor level and the enlargement of the studio below the garage. All existing FFL's (dwelling) and those approved (garage / studio) remain unaltered.
- The altered dwelling's overall height is less than that existing.
- The departure to the FSR standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the non-compliant built form nonetheless preserves environmental amenity in relation to:
 - solar access and overshadowing;
 - access to natural daylight and ventilation;
 - aural and visual privacy;
 - views and vistas from neighbouring and nearby properties and the public domain; and
 - visual impact and massing; and
 - parking or traffic generation.
- Appropriate environmental initiatives are proposed.
- The highly articulated façade treatment and selection of characteristic and recessive external materials and finishes reduces the dwelling's perceived bulk and scale when viewed from the surrounding public domain.
- Removing the non-compliance would not significantly alter the perceived scale and density of the proposed development when viewed from the public domain or surrounding development.

The above environmental planning grounds relate specifically to the additional GFA attributed to the proposed development, which contributes to the contravention of the FSR standard. The above points warrant the exceedance, are not generic, but rather, specific to the site and circumstances of the proposal. An appropriate and equitable planning outcome results.

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

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this

application as the departure from the FSR relates to local and contextual conditions, the site's existing and previously approved built form. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms on varying allotment sizes.

As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls. The studio is the built form which triggers the departure and in conjunction with the garage, its overall design is the same as that previously approved under DA 2020/189. The studio does not have any identifiable impact to neighbours, does not contribute to the visible overall bulk and scale and is not readily visible from the surrounding public domain. The site's overall built form is not incompatible considering its established and likely future built form context.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would result in a poorer urban design response and one which is inconsistent with that already deemed environmentally acceptable under DA 2020/189. In that sense compliance would hinder the attainment of the objects of Section 1.3 of the Act. The site's redevelopment and subsequent departure from the FSR standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

3.6 Is there public benefit in maintaining the development standard?

Generally, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the FSR standard would:

- serve no purpose other than to impose numerical inflexibility;
- be inconsistent with that already deemed environmentally acceptable under DA 2020/189;
- have little regard to the dwelling and garage's GFA/FSR which if treated in isolation from the studio (as it can be given, they are two distinct and separate built forms) would comply with the FSR standard; and
- forgo the opportunity to provide a benchmark architectural design solution and an embellished landscape condition for the site.

It is known that Council has considered applications favourably which depart from the FSR standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted, particularly given the current DA 2020/189. Under the presented circumstances the variation to the FSR standard is in the public interest because it is not inconsistent with the objectives of the FSR standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential zone. Therefore, it is argued that there is no public benefit in maintaining the adopted FSR planning control.

On balance the variation to the FSR standard is an appropriate use of the provisions of Clause 4.6. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

4.0 CONCLUSION

The proposed variation to the FSR standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical FSR standard would not significantly improve the amenity of surrounding properties or Council's desired future built form character as:

- the proposed FSR is the same as that previously approved under DA 2020/189 and which remains current;
- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone and is consistent with Council's strategic intent;
- the proposal satisfies and achieves the objectives of the FSR standard;
- the altered / proposed built form is not incompatible considering its established, desired and likely future built form context;
- that built form which is visible from the surrounding public domain is one which would comply the standard and which is anticipated by the planning controls; and
- improved internal amenity for the occupants whilst no adverse environmental or amenity related impacts to the neighbouring properties.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives for development in the zone and the objectives of the standard. It is therefore appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013.