

**Four Towns  
Planning**

*Planning and property consultant*

**OBJECTION PURSUANT TO CLAUSE  
4.6 OF MANLY LOCAL  
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT  
STANDARD REGARDING THE  
MAXIMUM FLOOR SPACE RATIO AS  
DETAILED IN CLAUSE 4.4 OF MANLY  
LOCAL ENVIRONMENTAL PLAN 2013**

**Demolition Works and Construction  
of a Mixed-Use Development**

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**This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.**

**Report prepared by:**

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**Report prepared for:**

Erin Isle Investments Pty Ltd

**3 February 2022**

***Disclaimer***

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## **Introduction**

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio (FSR) of a building as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

The following assessment of the variation to Clause 4.4 – FSR development standard, has taken into consideration the recent judgements contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

<b>Requirement</b>	1:1 381.7sqm
<b>Proposed</b>	1.037:1 396sqm
<b>Is the planning control in question a development standard?</b>	Yes
<b>Is the non-compliance with to the clause requirement a numerical/or performance based variation?</b>	Numerical
<b>If numerical enter a % variation to requirement</b>	3.7%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013.

The variation to the FSR control is consistent with surrounding developments and the proposed minor increase in GFA is compatible with the locality and complies with the maximum building height for the site. The breach to the FSR control is considered minor with no adverse impacts from the proposed development.

A variation to the strict application of the FSR standard is considered appropriate for the subject site as:

- The objectives of the MLEP2013 FSR control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 B1 Neighbourhood Centre zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.

### **Clause 4.6 Variation Requirements**

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* and review the following:

#### **Compliance being unreasonable or unnecessary**

1. 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 at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.4(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. 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 stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

#### **Sufficient environmental planning grounds**

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. 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]

#### **Is the proposed development in the public interest?**

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

#### **Secretary's Concurrence**

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

**General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.4(2) Floor Space Ratio**

**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—*
- (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.*

**Comment:** As detailed previously in this request, Clause 4.6 of MLEP2013 is applicable to enable a variation to the Floor Space Ratio to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the FSR control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

#### **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:** It is acknowledged that the proposed development does not comply with clause 4.4 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.4 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.4 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Floor Space Ratio as a floor space referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.4 (2) states:

*(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.*

The Floor Space Ratio Map sets a maximum FSR control of 1:1. For the purpose of calculating FSR, the MLEP2013 provides the following definition:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

*but excludes—*

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

It is proposed to provide 396sqm of GFA on the site which has a site area of 381.7sqm. This equates to an FSR of 1.037:1, representing a 3.7% variation to Council's standard.

The Floor Space Ratio in clause 4.4(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

*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:*

*(d) the cubic content or floor space of a building,*

Despite the variation to the floor space ratio control, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal will not result in any unreasonable visual impact on the Dobroyd Road and Commerce Lane streetscapes.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.



## Objection to Development Standard – Floor Space Ratio (Clause 4.4(2))

### Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council at [42] and [43]*.

**Comment:** Clause 4.6(3)(a) of the MLEP2013 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is *'unreasonable or unnecessary in the circumstances of the case'*.

In determining a merits based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366*) and *Project Venture Developments v Pittwater Council (2005) NSW LEC 91*).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for new housing options for the residential needs within the Northern Beaches LGA in particular the Balgowlah Heights precinct. As noted under the review of Clause 4.4 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.4, as outlined below:

- The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area.
- The proposal provides articulation and modulation of the facades which assist in maintaining an appropriate visual relationship between the proposal and existing developments in the area.
- The proposal enhances open space and landscaping to the site.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation.

2. The underlying objective or purpose of Clause 4.4 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

**Comment:** The underlying objective and purpose of Clause 4.4 is not relevant as the proposal and variation to the FSR meets the purpose and objectives of Clause 4.4:

A review of each objective is provided below:

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

The site has been designed to enhance the site through a new development that has taken into consideration the adjoining property to the west, whilst also understanding the sites constraints. The proposal complies with the building height and provides adequate setbacks as required by MDCP. Therefore, the proposed minor variation is consistent with the intent of the objectives in that the proposal is consistent with the streetscape character and bulk and scale of the area.

*(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,*

The proposal actually decreases the existing site coverage and includes new landscaping zones to the site. The proposal is of a density and bulk applicable to the site and retains the existing landscaping within the road reserve at the front of the site, therefore retaining the important landscape features.

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

The proposal enhances the existing visual relationship acknowledging the existing run-down commercial building. The proposal has been designed to the character of the area while creating its own “image” and “identity for the area. The proposal also increases landscaping on the site from nil to 77sqm of landscaped areas.

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

The proposal will have no 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.*

The site allows for adequate commercial space on the ground floor with an activated frontage to Dobroyd Road. It is important to note the low-scale nature of commercial within the neighbourhood zone which is adequately serviced for various commercial uses. The proposal maintains the viability of the business zone and will enhance the existing commercial tenancies (i.e. café at 31 Dobroyd Rd) through the provision of up to eighteen (18) additional patrons if the co-living housing is at full capacity.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

**Comment:** It would indeed be unreasonable for Council to refuse the development that is proposed by way of a relatively minor variation as the development does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area.

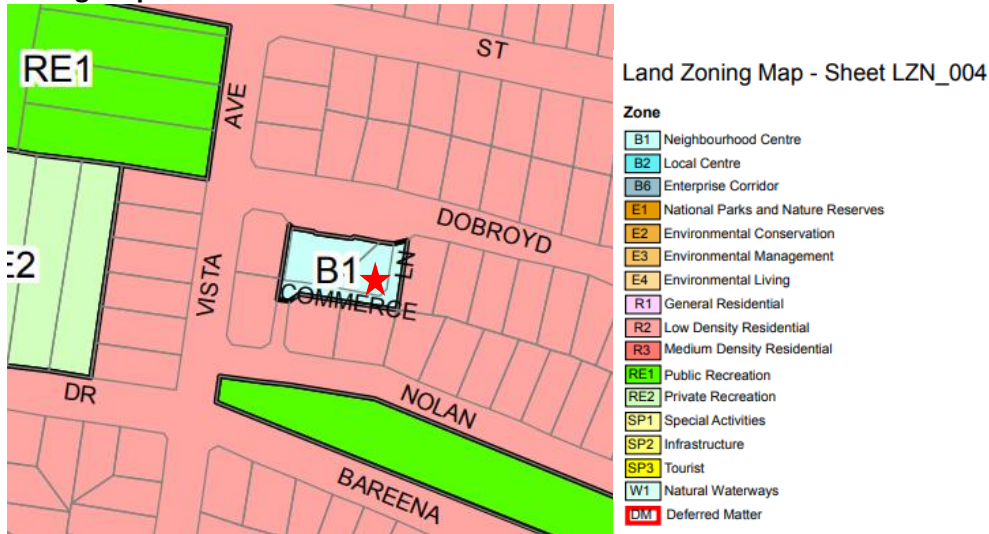
4. The development standard has been virtually abandoned or destroyed by the Council’s own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

**Comment:** Whilst the proposal seeks a variation to Councils numerical FSR standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments and approvals granted show that the development standard for FSR has been virtually abandoned or destroyed by Council’s own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable and should be based on the merit assessment.

5. The relevance of the zoning provisions of the land to which the development is proposed.

**Zoning Map**



**Zone B1 Neighbourhood Centre**

**1 Objectives of zone**

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

**2 Permitted without consent**

Home-based child care; Home occupations

**3 Permitted with consent**

Boarding houses; Business premises; Car parks; Centre-based child care facilities; Community facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Kiosks; Markets; Neighbourhood supermarkets; Office premises; Oyster aquaculture; Places of public worship; Public administration buildings; Medical centres; Neighbourhood shops; Recreation areas; Recreation facilities (indoor); Respite day care centres; Restaurants or cafes; Roads; Service stations; Shops; Shop top housing; Signage; Take away food and drink premises; Tank-based aquaculture; Veterinary hospitals; Water recycling facilities; Water supply systems

**4 Prohibited**

Pond-based aquaculture Water treatment facilities; Any other development not specified in item 2 or 3

**Comment:** The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

**Objectives of the B1 Neighbourhood Centre zone:**

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

The site is zoned B1 Neighbourhood Centre. The proposed mixed-use development is permissible through the permissible land uses and Housing SEPP, therefore the proposed development is permissible with Council's consent. The proposal is consistent with the objective of the zone, as supported below:

- The proposal provides a new form of housing which will utilise the existing commercial premises with the area.
- The proposal includes a new functional commercial tenancy which has an activated frontage to Dobroyd Road.
- The proposal encourages the revitalisation and rehabilitation of the existing site which is run down and in need of new facilities to bring it in line with the needs of the business zone.

### **Sufficient environmental planning grounds**

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

**Comment:** As detailed above, there are sufficient environmental planning grounds to justify the proposed variation to the MLEP2013 FSR control. Further justification to support the proposed variation is provided below:

- The proposed development is for a minor increase to the allowable GFA, which have set the ground rules for the bulk, scale and mass of the proposal with no breaches to the existing building footprint or height.
- The LEC planning principles on FSR relate to compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

- *Are the proposals physical impacts on the surrounding development acceptable?*
- *Is the proposals appearance in harmony with the buildings around it and the character of the street.*

In addressing the above planning principals, the benefits of the development, represents a new building with a functional design which enhances landscaping on the site.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The design proposed represents an increase in GFA which is minor and complies with the building height and relevant setbacks for the site.
- The site is constrained due to the small frontage width and lot size. The proposal has been designed strategically located to retain privacy and solar access to neighbouring properties.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the B1 Neighbourhood Centre zone.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.

2. 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]

**Comment:** This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.4(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the proposed development. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Floor Space Ratio. The proposal has been skilfully designed to be unique while accommodating the character of the area. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

### **Is the proposed development in the public interest?**

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

**Comment:** The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of FSR applicable to this site. Additionally, the development adds significant social and healthy benefits through a new functional development which provides for a new form of housing "co-living" housing within the Balgowlah Heights locality. Council should encourage such diverse housing options which support upgrades of old sites with new housing options to allow a diverse range of residents to live within or close to commercial areas within the Northern Beaches LGA.

### **Secretary's Concurrence**

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

**Comment:** The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the FSR development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

There are no other relevant matters required to be taken into account by the Secretary.

### **Summary and Conclusion**

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.4(2) Floor Space Ratio and this statement verifies that compliance with the provisions of clause 4.4(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

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

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

A variation to the strict application of Council's Floor Space Ratio development standard is considered appropriate for the site at 29-37 Dobroyd Road, Balgowlah Heights. The variation to FSR is retained within the building with a compliant building height and adequate setbacks for a neighbourhood centre.

This development proposes a departure from the maximum floor space ratio development standard, with the proposal to provide an FSR of 1.037:1 (3.7% variation).

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area.
- The proposal provides articulation and modulation of the facades which assist in maintaining an appropriate visual relationship between the proposal and existing developments in the area.
- The proposal enhances open space and landscaping to the site.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties.
- The design proposed represents an increase in GFA which is minor and complies with the building height and relevant setbacks for the site.
- The site is constrained due to the small frontage width and lot size. The proposal has been designed strategically located to retain privacy and solar access to neighbouring properties.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the B1 Neighbourhood Centre zone.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Floor Space Ratio, the B1 Neighbourhood zone objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Floor Space Ratio Clause 4.4(2) is acceptable and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. The variation under Clause 4.6 is to vary the Floor Space Ratio control to give Northern Beaches Council the power to grant development consent to the proposed development.