



CLAUSE 4.6 VARIATION TO THE FSR DEVELOPMENT STANDARD

# New dwelling house, garage and studio

17 Amiens Road, Clontarf

Prepared on behalf of

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## CONTENTS

|            |                                                                                                                                                                            |           |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>1.0</b> | <b>Introduction</b>                                                                                                                                                        | <b>1</b>  |
| <b>2.0</b> | <b>Description of the planning instrument, development standard and proposed variation...</b>                                                                              | <b>2</b>  |
| 2.1        | What is the name of the environmental planning instrument that applies to the land?                                                                                        | 2         |
| 2.2        | What is the zoning of the land?                                                                                                                                            | 2         |
| 2.3        | What are the objectives of the zone?                                                                                                                                       | 2         |
| 2.4        | What is the development standard being varied?                                                                                                                             | 2         |
| 2.5        | Is the development standard a performance based control? Give details.                                                                                                     | 3         |
| 2.6        | Under what clause is the development standard listed in the environmental planning instrument?                                                                             | 3         |
| 2.7        | What are the objectives of the development standard?                                                                                                                       | 3         |
| 2.8        | What is the numeric value of the development standard in the environmental planning instrument?                                                                            | 3         |
| 2.9        | What is the proposed numeric value of the development standard in the development application?                                                                             | 3         |
| 2.10       | What is the percentage variation (between the proposal and the environmental planning instrument)?                                                                         | 4         |
| <b>3.0</b> | <b>Assessment of the proposed variation</b>                                                                                                                                | <b>5</b>  |
| 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? | 5         |
| 3.1.1      | <i>Objectives of the zone</i>                                                                                                                                              | 5         |
| 3.1.2      | <i>Objectives of the FSR standard</i>                                                                                                                                      | 5         |
| 3.2        | Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?                                                                  | 8         |
| 3.2.1      | <i>Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?</i>                                                           | 8         |
| 3.3        | Are there sufficient environmental planning grounds to justify contravening the development standard?                                                                      | 10        |
| 3.4        | Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?                                      | 13        |
| 3.5        | How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?                                                                      | 13        |
| 3.6        | Is there public benefit in maintaining the development standard?                                                                                                           | 14        |
| 3.7        | Is the objection well founded?                                                                                                                                             | 14        |
| <b>4.0</b> | <b>Conclusion</b>                                                                                                                                                          | <b>15</b> |



## 1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (DA) proposing demolition of the existing dwelling house and garage and construction of a new dwelling house, double garage and studio below with landscaping and required site works at 13 Amiens Road, Clontarf (the **site**). Calculations in this submission are based on plans and information provided by Case Ornsby Design. This submission should be read in conjunction with the detailed Statement of Environmental Effects (**SEE**) prepared by LPDS and other supporting technical documentation.

As noted in the separate SEE, the proposal departs from the FSR standard at Clause 4.4 of Manly Local Environmental Plan 2013 (**LEP 2013**).

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 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.*

## **2.8 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 967m<sup>2</sup>, this equates to a gross floor area (GFA) of 386.8m<sup>2</sup>.

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

GFA calculation diagrams by Case Ornsby Design are submitted separately.

The proposed dwelling house has a GFA of 352.59m<sup>2</sup> and the garage / studio has a GFA of 69.53m<sup>2</sup>. This equates to an overall GFA of 422.12m<sup>2</sup> 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 dwelling house 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.

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

The proposed percentage variation is 9% or 35.32m<sup>2</sup>.



## 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 proposed development 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:

- proposes a dwelling house on the site, an existing and approved low density residential allotment of land;
- provides flexible housing for a family through the new separate studio;
- maintains existing dwelling / built form diversity in an established low density residential locality;
- will not adversely reduce existing residential amenity levels of the locality;
- enables a built form relative to height, bulk and scale and contemporary design that is compatible with the existing and likely future built form context;
- does not preclude the appropriate low density residential redevelopment of any neighbouring property;
- maintains existing amenity levels for adjacent landowners; and
- does not propose any non-residential land uses although the occupants can work from home as/if required.

#### 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**

- a single dwelling house plus a separate secondary dwelling 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 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 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 Figure 4 in the SEE, the proposed built form sits comfortably within its established and likely future built form context, including that proposed;
- 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 Figure 4 in the SEE;
- the dwelling's overall height, bulk and scale is less than that of the existing built form and critically complies with the LEP 2013 height standard. The site's existing dwelling departs from the LEP 2013 height standard;
- 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 are consistent with those existing,
- 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 relative to overshadowing, privacy, streetscape, built form character, parking, landscaping, visual impact and views and the capacity of the community infrastructure. The proposal clearly meets or exceeds these criteria. The proposal has been designed to minimise impacts and has had regard to site users and neighbours;
- 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, a generous amount of the proposed dwelling's GFA and FSR is located below ground level existing. 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 proposed built form exhibits design excellence relative to architectural, urban and landscape design, 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 which promotes infiltration and absorption as opposed to runoff;
- the proposed landscape design minimises the discharge of stormwater (by drainage or overland flow) from the site;
- the design and siting of the useable landscaped area provides for superior residential amenity for the occupants;
- natural drainage patterns are not altered in any way;
- it provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant;
- improvements to the landscape quality will enrich the site's landscape and scenic character and the immediate domain as viewed from Amiens Road and the neighbouring properties;
- 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 adjacent;
- 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?**

### **3.2.1 *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 (complying with the height standard) 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 dwelling's overall height is less than that of the existing built form which departs from the LEP 2013 height standard. The proposed dwelling house critically complies with the LEP 2013 height standard;
- the proposed redevelopment is a high quality piece of modern architecture and a well-considered design that pays due regard to the site's locational context including its neighbouring built form;
- 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 significant adverse impacts upon adjacent properties or the public realm;
- a smaller building envelope / alignment is proposed as that existing. Despite the additional FSR above that permitted, it does not materially add to the dwelling's height, bulk and scale when compared to that existing;
- the proposed built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain (see **Figure 4** in the SEE), given the scale and form of other hillside developments in the vicinity;
- the dwelling's overall height, bulk and scale is less than that of the existing built form which departs from the height standard. Critically the proposed dwelling complies with the LEP 2013 height standard. It is appropriately articulated and visually interesting;
- the additional FSR does not result from excessive site disturbance or excavation, rather the enlargement and rebuilding of an existing undercroft space to create the new secondary dwelling;

- a three storey building is proposed and which replaces an existing three storey building. 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 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;
- although the proposal departs from the FSR standard, the resultant built form is entirely consistent with that already permitted on the site and adjacent land and the departure does not result in any adverse environmental impacts to neighbouring properties or the surrounding public domain. The resultant built form provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual impact;
- the overall FSR will not preclude (and hasn't done so in the past) redevelopment of the neighbouring 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 are 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, and in some cases the non-compliance better achieves the objectives by allowing for a reasonably sized (and complying FSR in isolation) dwelling that also complies with the LEP 2013 height standard.

***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.

The resultant built form is one that exhibits substantial merit relative to architectural, urban and landscape design. 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?***

The development standard cannot be said to be abandoned. Notwithstanding and following a review of Council's Development Standard Variations Register there are numerous recent examples of dwelling houses and associated structures that depart from the FSR standard within LEP 2013, including:

- DA 2018/594 at 14 Abbott Street, Balgowlah Heights (13.4% departure);
- DA 2018/722 at 2 Steinton Street, Manly (36% departure);
- DA 2018/816 at 5 Edgecliffe Esplanade, Seaforth (27.5% departure);
- DA 2018/788 at 15 Griffiths Street, Fairlight (19.5% departure);
- DA 2018/1062 at 12 Rosedale Street, Fairlight (14.05% departure);
- DA 2018/1286 at 2 Lombard Street, Balgowlah (5.8% departure);
- DA 2018/1077 at 1A Panorama Parade, Seaforth (8.4% departure);
- DA 2018/1599 at 124 Woodland Street, Balgowlah (30.7% departure);
- DA 2018/1768 at 8 Allenby Street, Clontarf (8.8% departure);
- DA 2018/1888 at 13 Beatrice Street, Clontarf (19.9% departure);
- DA 2018/852 at 12 Moore Street, Clontarf (34.7% departure);
- DA 2018/1027 at 42 Rosedale Avenue, Fairlight (4% departure);
- DA 2018/1496 at 5 Eustace Street, Manly (28.6% departure);
- DA 2018/1542 at 76 Seaforth Crescent, Seaforth 9.2% departure);
- DA 2018/29 at 27 Alma Street, Clontarf (43.4% departure);
- DA 2017/274 at 128 Pittwater Road, Manly (20% departure);
- DA 2017/430 at 14A Beatty Street, Balgowlah Heights (8.2% departure); and
- DA 2017/207 at 2 Richmond Road, Seaforth (27.5% departure).

***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?**

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 proposed development at 13 Amiens Road, Clontarf, there are sufficient environmental planning grounds to justify contravening the FSR standard being:

- 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 (complying with the height standard) 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 dwelling's overall height is less than that of the existing built form which departs from the LEP 2013 height standard. The proposed dwelling house critically complies with the LEP 2013 height standard;
- substantial GFA / FSR is not visible from the surrounding public domain or is provided below ground level existing. It therefore has no identifiable impact on neighbouring properties or the surrounding public domain;
- it has been demonstrated within the SEE that the FSR non-compliance will not result in material environmental impacts to neighbouring properties and the surrounding public domain. In this regard the resultant built form provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual impact;
- the development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site as follows:
  - views from the Amiens Road carriageway (i.e. the public domain) will be improved due to the dwelling's decreased height, bulk and scale. These views are significant and include land and water interface;
  - the proposal satisfies the objectives of the R2 Low Density Residential zone;
  - the proposal satisfies the objectives of the FSR development standard;
  - the proposal complies with the LEP 2013 height standard;
  - the quantum of additional floor space (above the FSR standard) is arranged on the site in a manner that will not result in significant adverse impacts upon adjacent properties or the public realm;
  - a similar building envelope / alignment is proposed as that existing. Despite the additional FSR above that permitted, it does not materially add to the dwelling's height, bulk and scale when compared to that existing;
  - the proposed built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain (see **Figure 4** in the SEE), given the scale and form of other hillside developments in the vicinity;
  - 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;

- the nature of such an urban environment is that all future development will seek to maximise amenity and density through design. In this regard, the proposal represents an appropriate planning outcome with any adverse environmental impacts;
- 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 dwelling's actual bulk and scale when viewed from the surrounding public domain is a built form which is generally expected and is effectively screened from view by regenerated and proposed landscaping;
- within its context the site can accommodate the FSR proposed and the proposal generally is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality;
- appropriate environmental initiatives are proposed, including:
  - compliance with all BASIX requirements;
  - provision of a 3,000 litre RWT;
  - the provision of metal awnings and window projections;
  - increased useability of landscaped areas and retained / established landscaped areas;
  - the proposal provides significant natural light penetration throughout the dwelling through an open plan floor plan and the provision of two roof skylights;
  - the construction materials proposed provide high thermal mass to minimise heating and cooling loads;
  - the design minimises reliance on artificial lighting and mechanical ventilation;
  - the dwelling benefits from cross flow and stack effect ventilation;
  - all outdoor private spaces are designed as extension of the room to enhance and encourage outdoor and indoor living, while at same time acting as a transition space to modulate temperature within the dwelling;
  - the use of energy efficient fixtures;
  - despite excavation being proposed for the swimming pool, the site's existing contours have generally been retained. The proposal will not impact on existing natural drainage patterns, adjacent built form or the locality's natural environment;
  - substantial areas of deep soil landscaping and permeable areas are maintained. This permeable characteristic encourages infiltration and absorption;
- appropriate curtilage is maintained to the neighbouring properties through a similar building alignment as that existing;
- the proposal generally is of an intensity and scale commensurate with the locality's established and likely future urban conditions; and
- the departure from the standard and the resultant built form does not in any way preclude the redevelopment of any neighbouring property.



### **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 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 and existing built form.

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 (complying with the height standard) 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 site's overall built form sits comfortably within its established and desired future built form local 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 to the overall site and the area generally and in that sense it may be said that compliance with the standard 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 and which would 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. Furthermore, a rigid and inflexible compliance based approach to the development standard forgoes the opportunity to provide a benchmark design solution for the site, which includes the rebuilding and enlargement of the existing undercroft / storage space as a secondary dwelling. This is a desirable outcome.

Following a review of other DA's (see earlier) Council has considered applications favourably which depart from the FSR standard subject to a satisfactory environmental performance. 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 previously approved DA. 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 alter the development's environmental impacts and therefore impacts to neighbouring properties and the surrounding public domain as:

- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone;
- the proposal satisfies and achieves the objectives of the FSR standard;
- the proposal complies with the LEP 2013 height standard;
- the resultant built form sits comfortably within 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 amenity 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.