



CLAUSE 4.6 VARIATION STATEMENT

MAXIMUM FLOOR SPACE RATIO – CLAUSE 4.4 OF RYDE LEP 2014 &
CLAUSE 29(C) OF ARHSEPP

Demolition of existing buildings and structures, remediation, excavation, and construction of a mixed use development with associated landscaping and basement car parking

1-20 Railway Road and 50 Constitution Road
MEADOWBANK

Prepared for: Sasco Developments Pty Ltd



PLANNING

I N G E N U I T Y

Ref. M210247
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Clause 4.6 Variation Statement – FSR (Clause 4.4 of RLEP 2014 and Clause 29(c) of ARHSEPP)

1. INTRODUCTION

This precautionary Variation Statement has been prepared in accordance with Clause 4.6 of Ryde *Local Environmental Planning Plan 2014* (“RLEP 2014”) to accompany Development Application (LDA2020/0199) at Nos. 1-20 Railway Road and 50 Constitution Road, Meadowbank (“the site”). The application seeks consent for the demolition of existing buildings and structures, remediation, excavation, and construction of a mixed use development with associated landscaping and basement car parking.

The DA is currently the subject of a Class 1 appeal (216311 of 2021) filed with the Land and Environment Court (“LEC”).

2. PROPOSED VARIATION

Clause 4.4 of RLEP 2014 prescribes the maximum floor space ratio (“FSR”) for the site and refers to the *Floor Space Ratio Map*. The relevant map [sheet FSR_003] indicates that the maximum FSR permitted at the subject site is 2.7:1, which equates to 20,987.1m² of gross floor area (“GFA”).

Under RLEP 2014, GFA is defined as:

“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”*

The subject development includes a boarding house component and was therefore submitted in accordance with Division 3, Part 2 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (“ARHSEPP”). Pursuant to Clause 29(c) of the ARHSEPP, the proposal utilises the additional 20% bonus allowed (979.9m²), which would equate to an overall allowable GFA of 21,967m² (FSR - 2.83:1).



As illustrated in **Figure 1**, the development proposes a GFA of 21,913m² which numerically complies with the FSR permitted pursuant to the ARHSEPP. This bonus GFA has been distributed across the development to areas where it would have the least impact on the streetscape and neighbouring properties.

GFA	BUILDING A	BUILDING B	BUILDING C	BUILDING D	Retail	Apartments
(Retail) G					4243	
1	712	717	753	992		
2	718	720	899	992		
3	718	728	902	1034		
4	718	728	899	992		
5	606	396	559	731		
6	606	337	538	675		
7	0	0	0	0		
8	0	0	0	0		
Total(All)	4078	3626	4550	5416	21913	133
					ALLOWED GFA (2.7:1)	20987.1
					ALLOWED GFA WITH BONUS)	21967
					GFA OVER/UNDER	-54

Figure 1 Proposed GFA distribution across the development

However, Council do not accept the allocation of the bonus floor space across the other residential buildings (predominantly Building A). Council opine that as the bonus floor space has not been solely used for affordable housing purposes, the proposal does not comply with the maximum FSR allowed.

Of the bonus GFA, 518.6m² has been utilised for the boarding house component (Building D) of the development. The amount of GFA that has not been utilised for the boarding house component equates to 461.3m². Based on an area of 2,275m² for Building D, the allowable GFA for that building (inclusive of the 20% bonus) is 5,876.55m². Therefore, the variation sought is **461.3m²** or **7.8%** of the allowable GFA for Building D.

It is for legal submission as to whether that interpretation is correct and consequently, whether a request is required pursuant to Clause 4.6 to vary the control. The applicant contends that it is not. However, in the interests of abundant caution and in order to remove any jurisdictional hurdle to approval of the application, this Clause 4.6 Variation Statement has been prepared for consideration.

The prescribed FSR under Clause 4.4 of RLEP 2014 and Clause 29 (c) of the ARHSEPP are “development standards” to which exceptions can be granted pursuant to Clause 4.6 of RLEP 2014.

3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

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 all of these zones.

(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 4.3, to the extent that it applies to the land identified as "Town Core" on the Ryde Town Centre Precincts Map,

(cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),

(cc) clause 6.9.

It is noted that Clause 4.4 of RLEP 2014 and Clause 29 (c) of the ARHSEPP are not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the



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

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the FSR development standards is considered to be unreasonable and unnecessary as the objectives of those standards are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard(s) will be in the public interest because it is consistent with the objectives of the particular standard(s) and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards, the following planning grounds are submitted to justify contravening the prescribed FSR:

- a. As outlined in Section 1 of this Statement, the proposed development provides 21,913m² of GFA (FSR – 2.82:1) and therefore complies with the overall maximum GFA applicable under RLEP 2014 and the ARHSEPP (21,967m² or 2.83:1). The non-compliance solely relates to the distribution of the affordable housing bonus floor space across the development. As such, the density of development achieved across the entire site is compliant with and anticipated by the applicable controls.
- b. The bonus floor space allowable under the ARHSEPP has been distributed throughout the development, including within the Buildings A, B and C. This is considered to provide a superior urban design and planning outcome in that the bonus floor space has been located in areas of the development where it will have the least impact on the amenity of the locality and of neighbouring properties. If the bonus floor space was required to all be located within Building D, this would result in additional levels being provided to that building which would result in unreasonable impacts on the amenity of the locality and neighbouring properties by providing an excessive scale and form in the south-east corner of the site. These adverse impacts would include increased visual bulk and overshadowing, particularly to neighbouring properties to the south (No. 21-24 Railway Road) and south-east (No. 15-17 Angas Street). It would also result in an incongruous building form, whereby Building D would be taller than the other buildings proposed as part of the development, thus creating a disjointed and somewhat irregular built form when viewed in the context of the site.
- c. The proposed FSR variation directly enables the provision of Building D as a co-living (boarding house) component, providing 162 rooms. This affordable housing component would not be viable without the FSR bonus. Therefore, without the subject variation, the proposed development would not provide affordable housing on the site. This would reduce the housing variety provided as part of the development. Clearly, there is an inherent public benefit in providing affordable housing on the site, particularly given the proximity of the site to the TAFE NSW - Meadowbank and the Meadowbank Education and Employment Precinct. This public benefit is a direct result of the FSR non-compliance.



- d. Despite the numerical non-compliance with the FSR development standards, the development provides a scale and form of development that is compatible with surrounding developments and the emerging high density character of the Shepherd's Bay, Meadowbank precinct. The majority of new developments in the precinct are 6 and 7 storeys in height and as such, the proposed development will not be out of character with this scale. This scale and form is directly assisted by the distribution of bonus floor throughout the development.
- e. The design of the development carefully considers surrounding built context, including heritage assets in the locality. This includes Meadowbank shops, a local heritage item located on the western side of Railway Road. To provide appropriate relief to this heritage item the development incorporates a large 7.5m setback from Constitution Road which allows for a public plaza including public domain improvements, outdoor dining opportunities, and landscaping. This increased building separation ensures that the heritage significance and setting of nearby heritage items is not prejudiced by the development, as confirmed in the accompanying Heritage Impact Statement which concludes that:

"No part of the subject site is listed as a heritage item in any statutory list, nor does it contain a heritage item. The site is not located in or near any heritage conservation areas.

The site is located in the vicinity of the following heritage items listed in Schedule 5 of the Ryde LEP 2014:

Item No: I37 - 58-64 Constitution Road, Meadowbank (Meadowbank shops), and

Item No: I116 - Corner 1A Angas and 34 See Streets (Attached dwellings)

The proposed design for a Mixed Use & Co-Living development prepared by Fender Katsalidis Architects is sympathetic to the adjacent Meadowbank shops through the transition between the two, in both stepping of the buildings and in the careful articulation of the façade.

The siting of the proposal does not obscure any views of the Meadowbank Shops heritage item, and whilst the wider setting for the buildings is altered by the addition of the multi storied development to the east, the appreciation of the significance of the heritage item is retained and conserved.

The architectural form and detailing of the corner entry to the pedestrian plaza is strongly influenced by the form and scale of the heritage item, and specifically by the rhythm and proportions of the existing façade. The retention of the historic character of the item in an acceptable setting is further supported by a sympathetic choice of materials and colour palette for the new development.

The visual impact and proximity of the new building to the heritage item in the vicinity has an acceptable heritage impact.

In supporting and enhancing the relationship between the new development and the existing heritage building, specifically the open public space in front of the main heritage façade, the intent of Section 5 of the Ryde DCP 2014, will be fulfilled in that the project will support and encourage lively and safe streets by requiring active street frontages. The proposal will ideally encourage the care and use of the heritage buildings, driven by an increase in the local community and subsequent activity, which will provide an opportunity for the future care and conservation of the building fabric and potentially the establishment of more active uses.

The proposed redevelopment of the property at 1-27 Railway Road & 50 Constitution Road, Meadowbank, will have an acceptable impact on the heritage significance of the heritage items in the vicinity.

The proposed project, for a Mixed Use & Co-Living development, is consistent with the heritage objectives of the Ryde LEP 2014 and the Ryde DCP 2014. In our view, the consent authority should have no hesitation, from a heritage perspective, in approving this application."

- f. New developments within the precinct generally comprise of solely residential apartment developments with no non-residential uses on ground level (despite the B4 Mixed Use zoning) and no affordable housing component. In contrast, the proposed development includes a ground floor that is entirely made up of non-residential land uses and publicly accessible areas (other than servicing and plant areas), in addition to the provision of high quality co-living (boarding house) accommodation. This achieves a truly mixed used development, which will provide a new village square for the precinct, providing amenities, services and employment opportunities that will serve the whole precinct and wider locality. The development therefore provides an exemplary response to desired future character that is envisaged for the locality and is consistent with the desired future character objectives for the precinct the objectives of the B4 Mixed Use zone (as further detailed in Section 7 below).
- g. There will be no adverse impacts on the residential amenity of neighbouring properties as a result of the FSR non-compliance, as outlined below:
- i. The proposed development will not give rise to additional adverse impacts on solar access to neighbouring private open space or living areas between 9am and 3pm on 21 June, consistent with the relevant provisions under the ADG. Shadow diagrams that have been prepared with the development application demonstrate that the development will not result in any significant solar impacts to neighbours. As stated above, the non-compliance enables the distribution of the bonus floor space across the development reduces the height of Building D and therefore minimises the level of overshadowing to neighbouring properties to the south and south-east.
 - ii. Distribution of the bonus floor space across the development limits the overall scale and bulk of Building D, which is located in the prominent south-east corner of the site adjacent to a number of existing residential flat buildings. If the full bonus floor space were to be applied to Building D, its scale would be increased which would result in adverse visual bulk when viewed from neighbouring properties.
 - iii. The FSR variation does not result in any additional adverse visual or acoustic privacy impacts on neighbouring properties. The distribution of floor space across the development ensures that appropriate building separation and orientation is provided so as to limit potential adverse privacy impacts on neighbouring properties.
 - iv. The FSR variation has allowed floor space to be concentrated into the four residential building elements rather than concentrated in the south-east corner of the site. Opportunities for private and public views through the site are enhanced by the FSR breach which has enabled the built form to be broken up, providing physical gaps in the development, both from north to south and east to west through the site.
- h. The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:
- The development facilitates ecologically sustainable development by providing much needed, well-designed housing (including affordable housing) and commercial/retail floor space in an appropriate and highly accessible location. This will positively permute sustainable modes of transport and increase employment opportunities locally. Furthermore, the development will have a positive economic and environmental impact on the locality, increasing urban tree canopy on site (1.3b);
 - The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for an appropriate mixed use development. There will be substantial uplift in both housing and employment generation on the site, which aligns with the desired future character of the Shepherd's Bay, Meadowbank precinct (1.3c);
 - The development will deliver a co-living building which will provide high quality affordable rental housing for the wider Ryde community. The development is well placed to maximise the benefits of this type of

housing, being adjacent to a TAFE and Meadowbank Railway Station, providing access to the wider Sydney region (1.3d);

- As stated earlier in this statement, the development will not prejudice the heritage significance and setting of heritage items in the vicinity of the site (1.3e); and
- The development has been designed to be compatible with the surrounding built form and despite the FSR non-compliance, will not adversely impact neighbouring amenity. The development will provide excellent levels of amenity for prospective occupants, which is facilitated through the distribution of floor space enabling the built form to be broken up. Furthermore, the proposed development exhibits design excellence (1.3g).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The FSR variation will facilitate a high quality mixed use development with excellent levels of internal amenity that does not prejudice the character or appearance of the local streetscape or levels of residential amenity enjoyed by neighbouring properties.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

"86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. CLAUSE 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a)

in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of Development Standard

Clause 4.4 of RLEP 2014 contains the following objectives to be achieved by the FSR development standard:

- “(a) to provide effective control over the bulk of future development,*
- (b) to allow appropriate levels of development for specific areas,*
- (c) in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.”*

The proposal's compliance with these objectives and the objectives for development in the zone are demonstrated below.

Objective (a): “to provide effective control over the bulk of future development,”

As set out earlier, the proposed development will be compatible with the size of the subject site and its surrounding built and natural environment. The scale of development, being 6 or 7 storeys in height is in keeping with the scale and height of other recently constructed high density developments in the locality. This includes developments throughout the Shepherd's Bay, Meadowbank precinct and directly adjacent sites to the south and east.

The proposed FSR variation enables the bonus floor space to be appropriately distributed across the development, rather than being concentrated in Building D in the south-east corner of the site. This is possibly the most sensitive part of the site given its proximity to neighbouring developments. Accordingly, limiting the scale of this building by redistributing the bonus floor space elsewhere has direct benefits in limiting the visual bulk of the development as viewed from neighbouring properties and the public domain.

As a result, the proposed development will not appear as an overdevelopment of the site and will not be at odds with other built form in the locality. Despite the FSR variation, the development will sit comfortably into the site and the use of articulation and breaking up the built form by redistributing the bonus floor space – resulting in the breach – will actually reduce the overall appearance of bulk of the development when viewed from the street and surrounds.

Therefore, despite the non-compliance, objective (a) is achieved.

Objective (b): “to allow appropriate levels of development for specific areas,”

As set out earlier, the proposed density (FSR) for the entire development is consistent with what the maximum prescribed by RLEP 2014 and ARH SEPP, despite the variation relating to bonus floor space distribution. The proposal includes 21,913m² of GFA (FSR – 2.82:1) where the controls allow for 21,967m² of GFA (FSR – 2.83:1). Accordingly,

the density of the development is compliant with that anticipated by the controls, notwithstanding the distribution of floor space across the site.

In addition to the above, the proposed development is of a scale and form that is compatible with the streetscape and surrounding development in Shepherd's Bay, Meadowbank precinct. Furthermore, the proposed development does not result in any unreasonable adverse amenity impacts on neighbouring properties. Compliant building setbacks and separation have been provided in accordance with the ADG and RDCP 2014 requirements. As such, the development is generally consistent with the scale, bulk and form that is anticipated on site by the applicable controls.

Therefore, despite the non-compliance, objective (b) is achieved.

Objective (c): “in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure”

The site is identified in the Centres Map as “Meadowbank Urban Village.

The proposal provides a large scale development on a site consisting of 16 smaller lots. This provides a development of a scale and type that is consistent with other developments in the Shepherd's Bay, Meadowbank precinct and that is encouraged by the planning controls that apply to the site.

The development provides a significant uplift in housing (including affordable rental housing) and employment generation on the site, in a location with excellent access to public transport, being adjacent to Meadowbank Train Station. As such, it will encourage sustainable modes of transport and demonstrate a truly transit-oriented development that is encouraged in the precinct. Furthermore, the development provides a compatible mix of residential and on-residential uses on the site.

The subject development is enabled by the FSR that can be achieved utilising the bonus floor space provision under the ARHSEPP. This directly facilitates the provision of the co-living space, which adds to the variety of housing stock in the locality, particularly affordable rental housing which is in short supply. In particular, this will provide a significant public benefit by being located in close proximity of the site to the TAFE NSW - Meadowbank and the Meadowbank Education and Employment Precinct, thus assisting in providing low cost accommodation suitable for students.

Therefore, despite the non-compliance, the proposed development provides a sustainable development in close proximity to key public transport infrastructure that is consistent with the desired future character of the Shepherd's Bay, Meadowbank precinct. As such, objective (c) is achieved.

7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone B4 are as follows:

- *To provide a mixture of compatible land uses.*

The proposed development will provide a mixture of compatible residential and non-residential uses on the site. These includes residential apartments, co-living development, and commercial and retail uses.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

There will be a significant uplift in housing (including affordable rental housing) and employment generating uses on the site as a result of the development. Given the excellent accessibility of the site adjacent to Meadowbank Railway Station, this will encourage sustainable modes of transport for future occupants. Furthermore, the public

domain in and around the site will be enhanced as part of the development, improving the pedestrian and walking environment in the locality.

- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*

This objective does not apply to the subject site.

- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

This objective does not apply to the subject site.

The proposed development is consistent with the objectives of Zone B4 in that it will result in the development of a mixture of compatible uses in a highly accessible area. The use will be compatible with the mix of uses in the zone and will be compatible with the existing environmental and built character of the locality.

The FSR variation is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 5 May 2020, as part of Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table of the notice.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the FSR development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the FSR. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed FSR is non-compliant with that permitted on the site, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standards and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the FSR development standards is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standards would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation is supported.