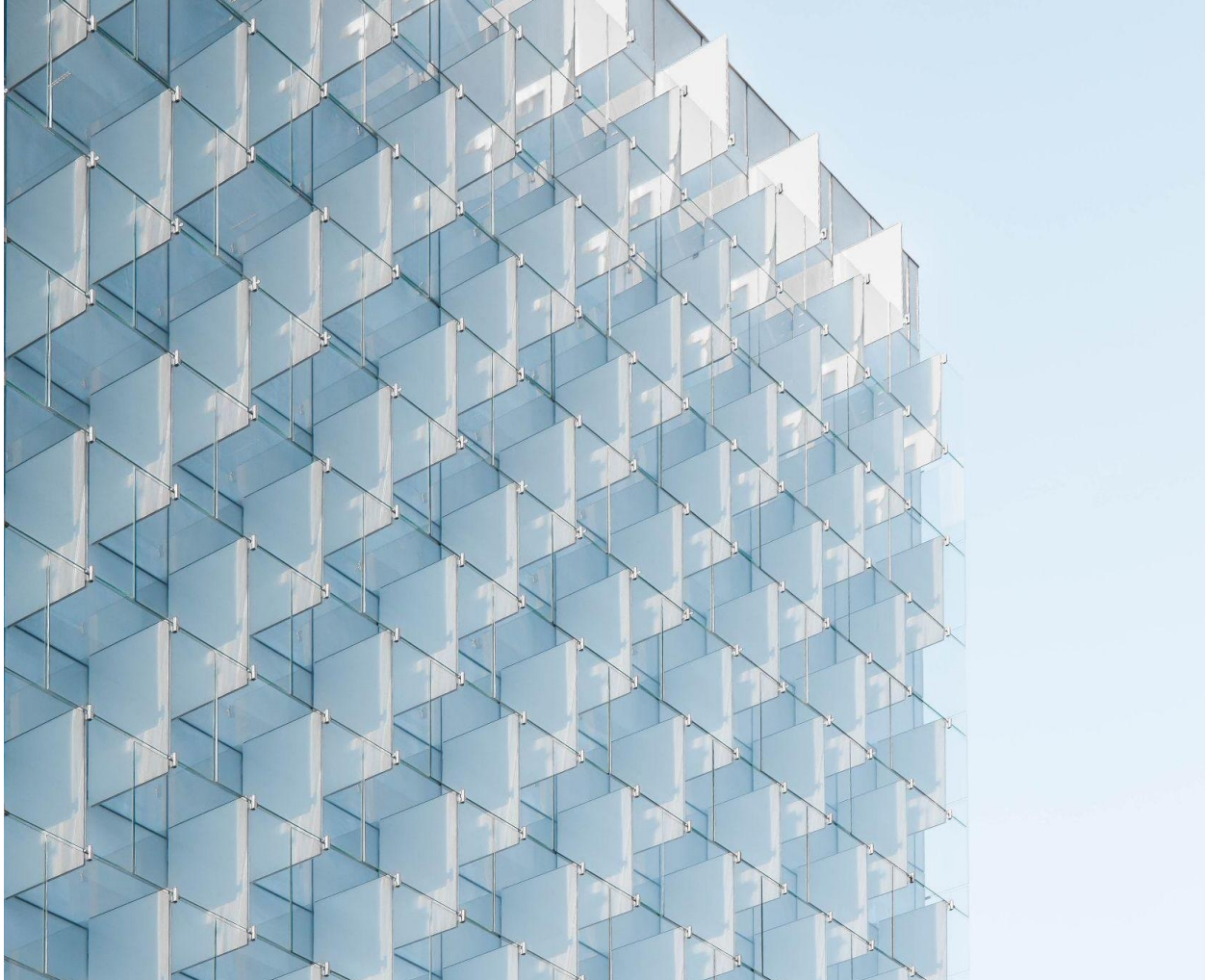


# WILLOWTREE PLANNING



11 September 2025

Ref: WTJ22-034  
Contact: Cameron Gray



## **CLAUSE 4.6 VARIATION REQUEST ADDITIONAL FLOOR SPACE RATIOS**

**PROPOSED RESIDENTIAL AGED CARE FACILITY, INDEPENDENT  
LIVING UNITS, COMMUNITY FACILITIES AND ANCILLARY LAND USES**

Uniting War Memorial Hospital Waverley – Bronte Road, Birrell Street,  
Carrington Road & Church Street Waverley

—

Prepared by Willowtree Planning Pty Ltd  
on behalf of Uniting NSW.ACT

Clause 4.6 Variation -Additional Floor Space Ratios

Proposed Residential Aged Care Facility, Independent Living Units, Community Facilities and Ancillary Land Uses  
Uniting War Memorial Hospital Waverley – Bronte Road, Birrell Street, Carrington Road & Church Street, Waverley



In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders – past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

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## Clause 4.6 Variation –Additional Floor Space Ratios

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## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the proposed Residential Aged Care Facility (RACF), Independent Living Units (ILU), community facilities and ancillary land uses at Uniting War Memorial Hospital Waverley, Bronte Road, Birrell Street, Carrington Road & Church Street, Waverley (Subject Site).

The Subject Site is zoned R3 Medium Density Residential and SP2 Infrastructure (Health Service Facilities), pursuant to the *Waverley Local Environmental Plan 2012* (WLEP2012), and is located within the Waverley Local Government Area (LGA). The proposed development is permissible with consent within the R3 and SP2 zones and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of WLEP2012.

The purpose of this written request is to seek a variation to the floor space ratio (FSR) development standards contained in Clause 87(2)(b)(iii) of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). Specifically, this Clause 4.6 Variation Request relates only to the extent of development within the land zoned R3 Medium Density Residential at the Subject Site.

Clause 4.6 of the WLEP2012 enables the consent authority to grant consent for development even though the development would contravene a development standard imposed by the WLEP2012 or any other EPI. As such, this Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Subject Site and concludes that the proposed non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

### 1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 87(2)(b)(iii) and has been prepared in accordance with the requirements of Clause 4.6 of WLEP2012 which includes the following objectives:

- (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.



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Clause 87(2) is reproduced below:

- (2) Development consent may be granted for development to which this section applies if—
- (a) the site area of the development is at least 1,500m<sup>2</sup>, and
- (b) the development will result in a building with the maximum permissible floor space ratio plus—
- (i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or
- (ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or
- (iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and
- (c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

Pursuant to Clause 87(2) of the Housing SEPP, the Subject Site has a site area of at least 1,500m<sup>2</sup> and the portion of the development within the R3 zoned land comprises both ILUs and RACF and as such, is eligible for an additional 25% of the maximum FSR that applies under WLEP2012. As a result, the R3 portion of the Subject Site is eligible for a maximum FSR of 1.5:1. **Table 1** below summarises compliance with the standard below.

The proposed development seeks a variation to the maximum FSR prescribed under the Housing SEPP. This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by WLEP2012.

### 1.3 DEVELOPMENT STANDARD VARIATION

The proposal consists of ILUs and RACFs within the R3 zoned portion of land at the Subject Site, the FSR of which is shown in **Table 1** below. It is noted that the portion of the Subject Site zoned SP2 Infrastructure is subject to a maximum FSR of 1.2:1.

TABLE 1: FLOOR SPACE RATIO			
Area	Maximum FSR	Proposed FSR	Variation
<b>R3 zoned land</b>	1.5:1 (9,164m <sup>2</sup> GFA)	1.71:1 (10,445m <sup>2</sup> GFA)	+0.21:1 (+1,281m <sup>2</sup> GFA)
<b>SP2 zoned land</b>	1.2:1 (33,960m <sup>2</sup> GFA)	1.15:1 (33,960m <sup>2</sup> GFA)	-0.05:1 (-1,329m <sup>2</sup> GFA)
<b>Site average</b>	1.25:1 (43,124m <sup>2</sup> GFA)	1.25:1 (43,124m <sup>2</sup> GFA)	Nil



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The proposed development represents the culmination of a rigorous and comprehensive planning and design process, that demonstrates the ideal built form to be developed on the Subject Site. The proposed development provides a design response that is based on a clear understanding of the spatial and urban context of the Subject Site and the neighbourhood character.

It is noted that the variation does not relate to any buildings with a maximum building height which exceeds that contemplated by Clause 87 of the Housing SEPP and Clause 6.13(4)(a) of WLEP2012, such that it can be considered an overdevelopment of the Subject Site. It is noted that location of such FSR aligns with the intent and design outcomes, including density distribution and building heights, of the Planning Proposals approved at the Subject Site (Planning Proposals – PP-2020-447 (PPI) and PP-2021-4641 (PP2)).

As detailed in **Table 1** above, the proposed variation to the maximum FSR represents a redistribution of FSR from the land zoned SP2 to the land zoned R3, overall resulting in a compliant FSR across the entire site. This Clause 4.6 Variation Request therefore represents a technical variation to the standard only.

Nonetheless, the proposed non-compliance relates specifically to the need to provide a balanced FSR across the Subject Site, providing built form in specific areas so as to minimise impacts to the existing heritage items, allowing adequate solar access to the areas of outdoor space and ensuring an appropriate response to the surrounding streetscape.

Curtailling of the proposed development to strictly comply with the distribution of FSR across the Subject Site would result in the relocation of approximately 12 units away from the R3 land (likely Building E and F) and onto a building in the SP2 land which are generally located in closer proximity to existing and proposed sensitive areas of the Subject Site such as the Edina Building, 99 Birrell Street, Church Street Cottages, existing development across Bronte Road and the proposed areas of open space. Any such relocation would result in overshadowing, bulk and scale and privacy implications which can be reasonably avoided through the redistribution of such units to the R3 land.

In its current form, the proposal therefore represents the most efficient use of the Subject Site which responds to the site context and surrounding locality, compared to a development which is entirely compliant with the standard.



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## PART B THRESHOLDS THAT MUST BE MET

### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of WLEP2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

- (a) **compliance with the development standard is unreasonable or unnecessary** in the circumstances, and*
- (b) there are **sufficient environmental planning grounds to justify the contravention** of the development standard.*

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

#### First Limb – cl 4.6(3)

Clause 4.6(3) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have “considered” the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is “unreasonable or unnecessary” and that “there are sufficient environmental planning grounds to justify” the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be*



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*satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced.”*

Accordingly, a consent authority must be satisfied:

- a. that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b. of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3** and **4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the FSR development standard at Clause 87(2)(b)(iii) of the Housing SEPP.





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## PART C STANDARDS BEING OBJECTED TO

### 3.1 OVERVIEW

The Subject Site is zoned R3 Medium Density Residential and SP2 Infrastructure (Health Service Facilities) and is subject to the underlying objectives of the varied standard as well as the R3 and SP2 zones under WLEP2012.

### 3.2 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the proposed RACF, ILU, community facilities and ancillary land uses at the Subject Site. The proposal would exceed the FSR applicable to the R3 zoned land. It is noted that this Variation Request is limited to the R3 zone land only, however the overall development proposes a compliant FSR when the controls across the various lots are combined.

The development in its proposed built form and scale will provide housing supply that is purpose built to satisfy the function of the use and is compatible and responsive in form and scale with the desired future character of the area, site-specific provisions and existing development in the locality. The proposed non-compliances will not have an adverse impact on the area.

The proposed development represents the culmination of a rigorous and comprehensive planning and design process, that demonstrates the ideal built form to be developed on the Subject Site. The proposed development provides a design response that is based on a clear understanding of the spatial and urban context of the Subject Site and the neighbourhood character.

It is noted that the variation does not relate to any buildings with a maximum building height which exceeds that contemplated by Clause 87 of the Housing SEPP and Clause 6.13(4)(a) of WLEP2012, such that it can be considered an overdevelopment of the Subject Site. It is noted that location of such FSR aligns with the intent and design outcomes, including density distribution and building heights, of the Planning Proposals approved at the Subject Site (Planning Proposals – PP-2020-447 (PP1) and PP-2021-4641 (PP2).

As detailed in **Table 1** above, the proposed variation to the maximum FSR represents a redistribution of FSR from the land zoned SP2 to the land zoned R3, overall resulting in a compliant FSR across the entire site. This Clause 4.6 Variation Request therefore represents a technical variation to the standard only.

Nonetheless, the proposed non-compliance relates specifically to the need to provide a balanced FSR across the Subject Site, providing built form in specific areas so as to minimise impacts to the existing heritage items, allowing adequate solar access to the areas of outdoor space and ensuring an appropriate response to the surrounding streetscape.

Curtailing of the proposed development to strictly comply with the distribution of FSR across the Subject Site would result in the relocation of approximately 12 units away from the R3 land (likely Building E and F) and onto a building in the SP2 land which are generally located in closer proximity to existing and proposed sensitive areas of the Subject Site such as the Edina Building, 99 Birrell Street, Church Street Cottages,



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existing development across Bronte Road and the proposed areas of open space. Any such relocation would result in overshadowing, bulk and scale and privacy implications which can be reasonably avoided through the redistribution of such units to the R3 land.

In its current form, the proposal therefore represents the most efficient use of the Subject Site which responds to the site context and surrounding locality, compared to a development which is entirely compliant with the standard.



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## PART D PROPOSED VARIATION TO STANDARDS

Pursuant to Clause 4.6 of WLEP2012 exception is sought from the FSR development standard applicable to the Subject Site pursuant to Clause 87(2)(b)(iii) of the Housing SEPP.

### 4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the proposal's compliance with the underlying objectives and purpose of that development standard.

There are no specific objectives for Clause 87 or Part 5 of the Housing SEPP. Based on the principles of this policy set out in Cause 3 of the Housing SEPP, it can be considered that the underlying purpose of this provision is to incentivise seniors housing in zones where residential flat buildings or shop-top housing is permitted where sites are 1,500m<sup>2</sup> or greater. This is achieved by applying the additional FSR bonus, which is 25% in this instance, given that the proposal includes both ILUs and RACF. In order for a development to utilise the applicable FSR standards, a building height development standard is provided, allowing an additional 3.8m above the maximum permissible building height, as defined in the Housing SEPP.

The proposed development utilises the FSR and building height development standards pursuant to Clause 87, which is intended to incentivise seniors housing for the purposes of RCFs and ILUs. The requirement of strict compliance with the development is unnecessary, as:

- The proposal does not seek to vary the building height on the R3 zoned land above what is contemplated by Clause 87 of the Housing SEPP such that it can be considered an overdevelopment of this portion of the Subject Site. Therefore, the underlying purpose of the development standard is achieved, notwithstanding the exceedances in the maximum FSR;
- Strict compliance would result in the redistribution of up to 12 apartments to other areas of the Subject Site which is unlikely to be feasible given the site-specific constraints. As such, strict compliance may result in the complete loss of such units, which is contrary to the overarching purpose of Clause 87 of the Housing SEPP as well as not assisting in meeting the strategic housing needs of the Subject Site and proposed development;
- There are no additional adverse impacts arising from the proposed non-compliance; and
- The burden placed on the community (by requiring strict compliance with the standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliance.

### 4.2 OBJECTIVES OF THE ZONE

The Subject Site is zoned R3 Medium Density Residential and SP2 Infrastructure pursuant to WLEP2012. Therefore, consideration has been given to the R3 and SP2 zone objectives in **Table 2** below:



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**TABLE 2: CONSISTENCY WITH THE ZONE OBJECTIVES**

Objective	Response
<b>R3 Medium Density Residential</b>	
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	The proposed development will provide a substantial contribution to the need for seniors housing within the medium density residential environment.
<i>To provide a variety of housing types within a medium density residential environment.</i>	The proposed development will provide a range of seniors housing offerings both in scale and function.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development includes a number of community and ancillary land uses that provide facilities and services to meet the day to day needs of future residents of the Subject Site and residents of the surrounding area.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	Pedestrian links have been created throughout the Subject Site and significant bicycle facilities provided to encourage walking and cycling.
<i>To increase or preserve residential dwelling density.</i>	The proposed development substantially increases residential dwelling density at the Subject Site, providing 218 new ILU and 105 aged care beds.
<i>To encourage the supply of housing, including affordable housing, that meets the needs of the population, particularly housing for older people and people with disability.</i>	<p>The proposed development will provide a substantial contribution to affordable housing and housing for older people including residential aged care to allow for ageing in place and keeping a cohesive community for all residents.</p> <p>The proposed development provides more than double the number of required affordable housing units.</p>
<i>To provide development that is compatible with the desired future character and amenity of the surrounding neighbourhood.</i>	The proposed development has been designed to be consistent with and enhance the desired further character of the surrounding area whilst minimising amenity impacts.
<i>To promote development that incorporates planning and design measures that reduce the urban heat island effect.</i>	<p>Significant canopy planting and landscaping is provided to assist in reducing the impacts of the urban heat island effect.</p> <p>The proposal to introduce a full geothermal heating and cooling system will reduce the need for traditional air conditioning and will assist in reducing the impacts of urban heat island effect.</p>
<i>To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping.</i>	As above, significant canopy planting and landscaping is provided.



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SP2 Infrastructure	
To provide for infrastructure and related uses.	The proposed development provides for uses listed within the SP2 zone on the Subject Site and is compatible with the provision of infrastructure.
To prevent development that is not compatible with or that may detract from the provision of infrastructure.	

#### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) (refer to **Section 2.1**) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6.

The five (5) methods outlined in *Wehbe* include:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- *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 (Fourth Method).*
- *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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

It is sufficient to demonstrate only one of these methods to satisfy clause 4.6(3)(a) of LCLEP 2009 (*Wehbe*, *Initial Action* at [22], *Rebel* at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].



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However, in this case, it is demonstrated that the First Method has been satisfied, and the objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard.

When considering whether a development standard is appropriate and/or necessary, one must take into account:

- The nature of the proposed variation;
- The site context; and
- The design of the proposed development.

Following the decision in *Initial Action*, it was established that Clause 4.6 does not require an applicant to demonstrate that a development which contravenes a development standard has a better (or neutral) environment planning outcome than a development that complies with the development standard.

By redistributing a portion of the development to the R3 zoned land, a site layout is achieved that provides a design response that is based on a clear understanding of the spatial and urban context of the Subject Site and the neighbourhood character and minimises impacts to sensitive areas of the Subject Site and surrounding locality.

The standard is therefore unreasonable and unnecessary in the circumstances of the case. The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Subject Site. The objectives of the relevant clause and the zones would be upheld as a result of the proposed development. In light of the above, the application of the development standard is therefore unreasonable and unnecessary in response to the proposed development.

#### **4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

In *Initial Action*, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds to justify the departure of the development FSR development standard are as follows:

- The variation to the FSR development standard is a result of the redistribution of bulk away from the more sensitive areas of the Subject Site and to the R3 zoned land to ensure an appropriate response to the site-specific constraints and an overall development which remains commensurate and complementary to the surrounding locality;
- The variation to the FSR development standard facilitates the orderly and economic use of land by permitting a design and built form which responds to, and is consistent with, the site-specific controls for the Subject Site. Strict compliance would require a design which was not orderly or economic if it was enforced by requiring all service elements to be removed and relocation of



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essential facilities. The Chief judge held in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at para 23 that environmental planning grounds are matters which go to and further the objectives of the EPA Act, one of which is the orderly and economic development of land, as outlined above;

- Should compliance with the development standard be enforced, the effective operation of the seniors housing and efficiency of the Subject Site in providing additional housing supply would be significantly reduced;
- The proposal is consistent with the desired future character of the Subject Site within the area and generally complies with the relevant built form controls; and
- The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity, particularly in regard to visual bulk, privacy, overshadowing and sunlight access.

For the reasons outlined above, it is considered that the proposed variation to the FSR development standard in Clause 87(2)(b)(iii) is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under WLEP2012.

#### 4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposed development will provide an appropriate transition in urban form to the surrounding development within the locality. An appropriate mix of finishes and materials have been employed to ensure a high-quality urban form is achieved when viewed from the street and surrounding sites with minimal impacts on the amenity of the built environment.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants and has been designed to maximise the sustainability of the proposed development.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposed development will make use of the floor space ratio permissible on the Subject Site, resulting in an economically beneficial development without unacceptable economic, environmental or social impact.



#### Clause 4.6 Variation –Additional Floor Space Ratios

Proposed Residential Aged Care Facility, Independent Living Units, Community Facilities and Ancillary Land Uses  
Uniting War Memorial Hospital Waverley – Bronte Road, Birrell Street, Carrington Road & Church Street, Waverley



TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
	The minor variations facilitate the orderly and consistent design of the building which would be lost if strict compliance was to be required.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposed development provides all required affordable housing.  The proposed development provides more than double the number of required affordable housing units.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The proposed development has been sited so as to result in minimal impacts on the surrounding environment.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The proposed development has been sited and designed to maintain the heritage significance of the Subject Site and surrounding conservation areas.
<i>(g) to promote good design and amenity of the built environment,</i>	The proposed development will provide an appropriate transition in urban form to the surrounding development within the locality. An appropriate mix of finishes and materials have been employed to ensure a high quality urban form is achieved when viewed from the street and surrounding sites with minimal impacts on the amenity of the built environment.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The application has been submitted to the Department of Planning, Housing and Infrastructure (DPHI).
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The application would be subject to the relevant public notification requirements.





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#### 4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by local planning panel rather than under delegation.

#### 4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 87(2)(b)(iii) is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of WLEP2012, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3**);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.5**).

Overall, it is considered that the proposed variation to the FSR development standard is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of WLEP2012.



#### Clause 4.6 Variation –Additional Floor Space Ratios

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## PART E CONCLUSION

For the reasons outlined above, it is requested that DPHI support the Variation Request, which seeks approval for non-compliance with Clause 87(2)(b)(iii) of the Housing SEPP for the following reasons:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The proposal is consistent with the objectives of the EP&A Act (refer to **Section 4.5**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**).

Given the justification provided above, the Variation Request is well founded and should be favourably considered by DPHI.

