

# Clause 4.6 Variation Request

Pathways Leura Village – 203-223 Leura Mall, Leura

Section 87(2)(a)(iii) of the Housing SEPP

Submitted to Department of Planning, Housing and Infrastructure  
on behalf of Pathways

5 February 2026

[gyde.com.au](http://gyde.com.au)



GYDE

## Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

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Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

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Report Version: RtS

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# 1. Introduction

This is a formal Request that has been prepared in accordance with clause 4.6 of the *Blue Mountains Local Environmental Plan 2015* (BMLEP 2015) to justify a variation to the floor space ratio (FSR) development standard prescribed in section 87(2)(a)(ii) of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). The Request accompanies State Significant Development Application (SSDA) (SSD-80068720) which was lodged on 22 September 2025, seeking approval for the restoration of the Ritz estate to facilitate the site's continued use as a high-quality residential care facility (RCF) located at 203- 223 Leura Mall, Leura (the site). The project is otherwise known as 'Pathways Leura Village'.

Clause 4.3 of the BMLEP 2015 sets out a maximum FSR of 0.4:1 for the site. Section 87(2)(a)(iii) of the Housing SEPP provides a bonus of 20% or 0.08:1 above the permissible 0.4:1 BMLEP standard. Therefore, the maximum permissible FSR for the RCF on the site is 0.48:1.

It is worth observing that section 107 (s107) of the Housing SEPP contains non-discretionary standards for RCFs. S107(2)(c) establishes a non-discretionary FSR standard of 1:1. A FSR Request was not originally prepared for SSD-80068720 as the Proponent considered that a Request was not necessary as the project has an FSR of 0.663:1 sitting below the non-discretionary FSR standard of 1:1. Regardless, we have prepared the Request for the avoidance of any doubt seeking a variation to the 0.48:1 FSR standard. This Request accompanies the Response to Submissions (RtS) and Amendment Report dated February 2026.

The proposed development has an FSR of 0.663:1 being a 0.183:1 or 38% variation of the 0.48:1 standard. The gross floor area (GFA) is 7,489sqm being a 2,065sqm variation of the permissible GFA of 5,424sqm.

The proposed development sits well below the non-discretionary standard (1:1) by 0.337:1.

It is noted that the site has been subject of a former development application no. X/1436/2021 / NSWLEC proceedings 2023/30525. This former DA similarly retained and restored the Ritz. The previous application had an FSR of 0.64:1 or 7,328.6sqm.

The proposed variation to the FSR development standard is justified because:

- The variation facilitates the achievement of the principles of the Housing SEPP including encouraging development of housing that will meet the needs of more vulnerable members of the community, namely seniors.
- The variation allows the retention and restoration of the Ritz and the northern façade design of the new building to be complementary of the adjacent Managers Residence, also to be restored.
- The variation causes no adverse environmental impacts.
- The proposal, with its FSR variation, does not represent an overdevelopment achieving an FSR of 0.663:1 being 0.337:1 less than the 1:1 non-discretionary standard in s107(2)(c) of the Housing SEPP.
- The variation is in the public interest as it allows the provision of RCF rooms and communal spaces that meet modern seniors housing standards.

The objectives of clause 4.6 are to provide an appropriate level of flexibility when applying development standards, and to achieve netter outcomes for and from development. In the circumstances of this application, a better outcome is achieved both for and from the development by the flexible application of the floor space ratio development standard.

This request should be read in conjunction with the documents prepared in support of the SSDA lodged for the project, including the:

- Environmental Impact Statement, as supplemented by the Response to Submissions Report (RtS) and Amendment Report prepared by Gyde;
- Architectural Plans prepared by PBD Architects;
- Site Survey prepared by Geo Survey; and
- Statement of Heritage Impact and Supplementary RtS Material prepared by Weir Phillips Heritage.

## 2. The site

The site is 203-223 Leura Mall, Leura and is located in the Blue Mountains local government area (LGA). The site is legally known as Lot 20 DP 1076123.

The site is approximately 83km west of Sydney’s Central Business District and 2km east of Katoomba. The Blue Mountains is a mountainous region and borders Sydney’s metropolitan area.

The site has an area of 11,300 sqm. The site’s topography is as follows:

- On Wascoe Street – falls south to north from RL969.37 to RL 962.32 (7.05 metre difference)
- On Megalong Street – falls east to east from RL974.05 to RL962.32 (11.32 metre difference)
- On Leura Mall – falls north to south from RL974.05 to RL969.44 (4.61 metre difference)

Geo Survey’s Site Survey dated 10 March 2025 shows the steep terrain at certain parts across the site namely on the Wascoe and Megalong frontages. This change in level is evident in Figure 5.

The site comprises several buildings of varying typologies and scales including:

- The Ritz
- Manager’s residence
- Laundry building
- Education offices (cottage); and
- Sheds and outbuildings.



Figure 1 Location of existing buildings (Source: Gyde)

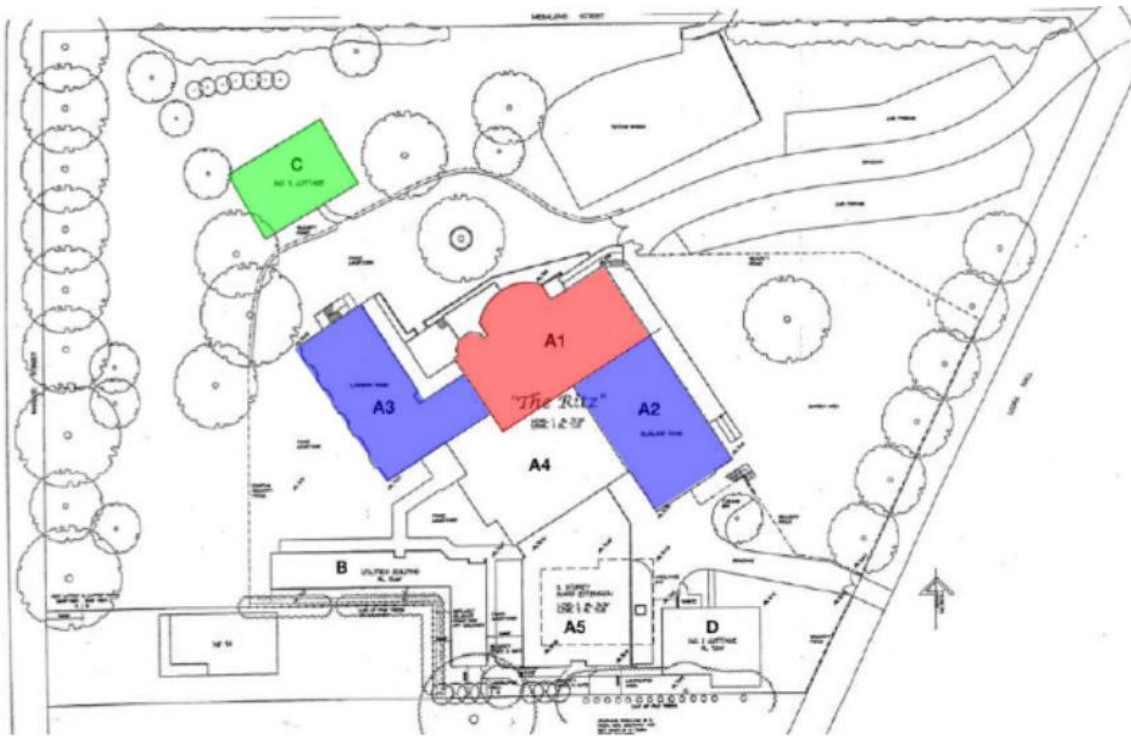


Figure 2 Existing building site plan



Figure 3 Aerial photo of the site, site outlined in red (Source: Gyde)

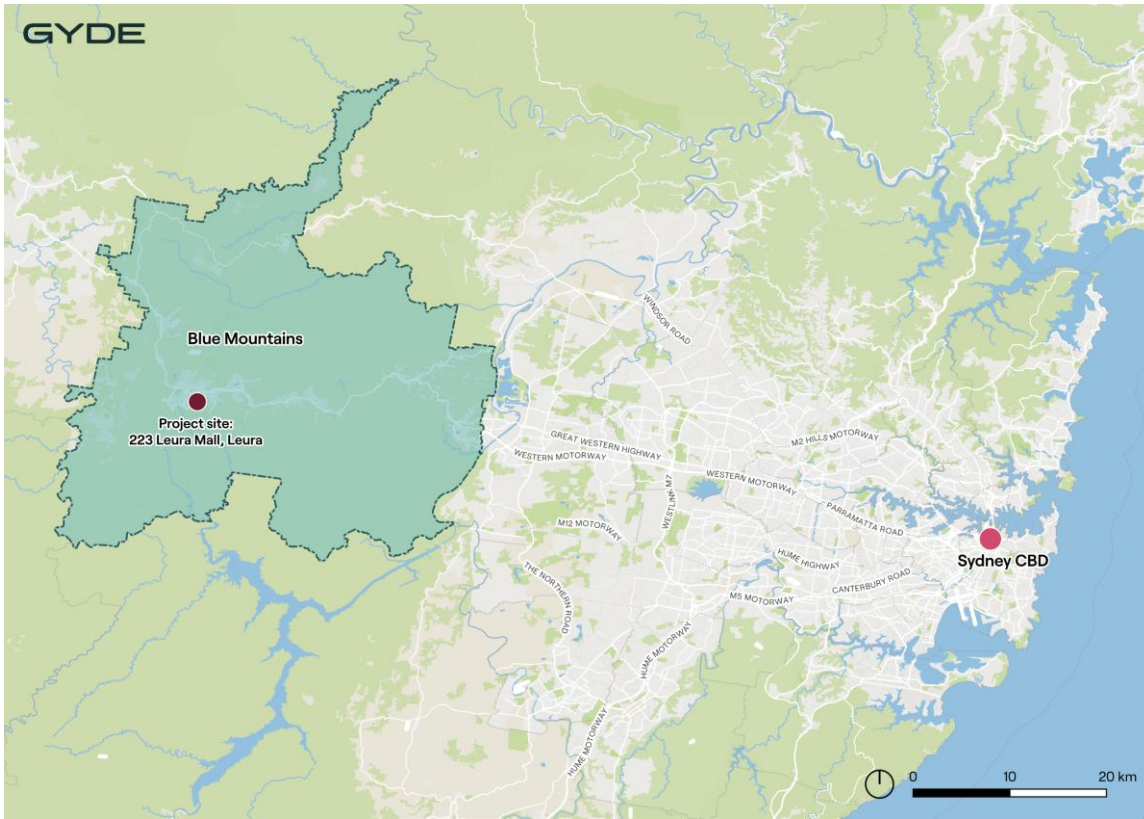


Figure 4 Regional context map, site identified with marker (Source: Gyde)

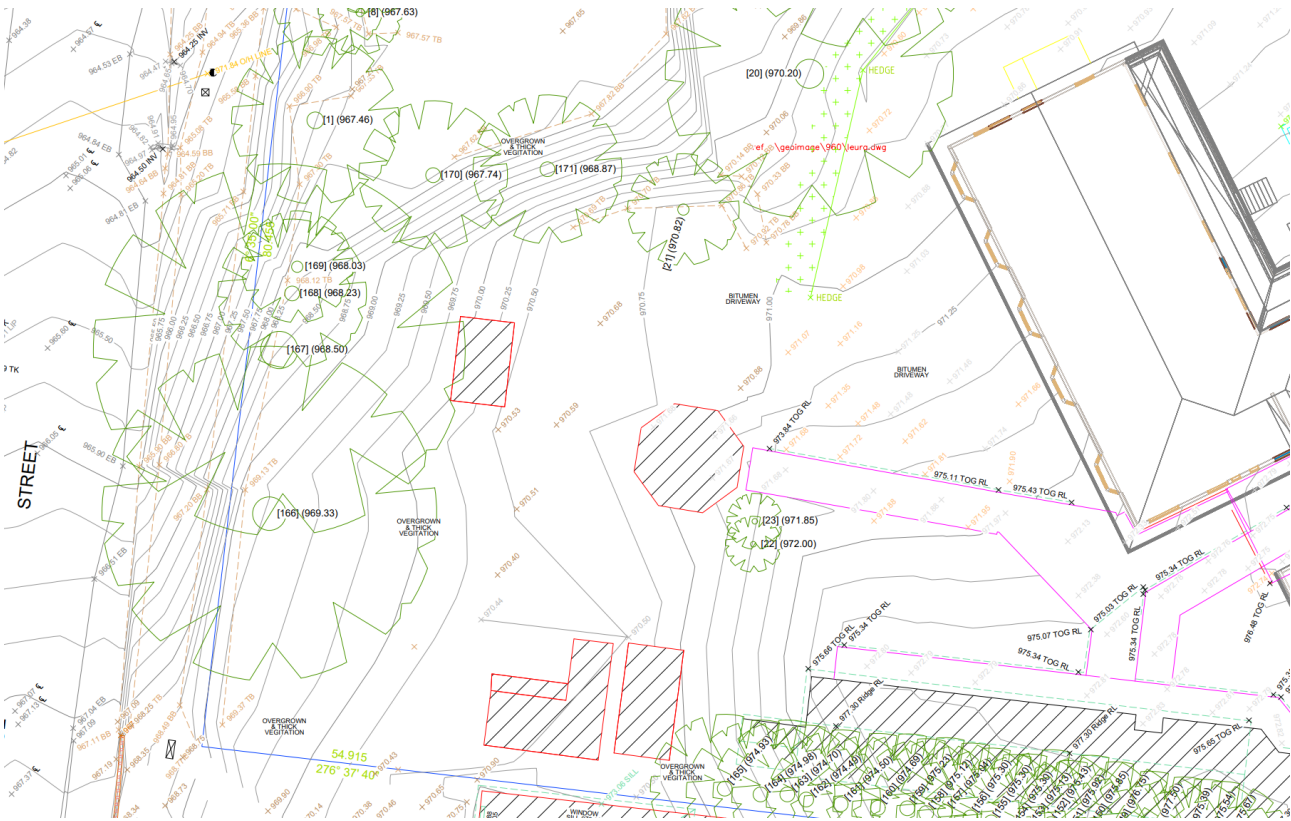


Figure 5 Extract of sheet 3 of the Site Survey (Source: Geo Survey)

## 3. Standard to be varied

The development standard proposed to be varied is the FSR prescribed in s87(2)(a)(ii) of Chapter 3, Part 5 of the Housing SEPP.

Section 87 of the Housing SEPP applies to development for the purposes of seniors housing on land to which Chapter 3, Part 5 of the Housing SEPP applies if development for the purposes of a residential flat building (or shop top housing) is permitted on the land in another environmental planning instrument. RFBs are permissible with development consent in the R1 General Residential in the BLEP. Hence, s87 of the Housing SEPP applies.

Section 87(2)(a)(ii) says that development consent may be granted for development to which s87 applies if the development will result in a FSR of not more than an additional 20% of the maximum permissible FSR if the additional floor space is used only for the purposes of the residential care facility.

The maximum permissible FSR standard established in Clause 4.4 of the BMLEP is 0.4:1.

Therefore, in applying the bonus in s87(2)(a)(ii) of the Housing SEPP, the total maximum FSR is 0.48:1.

Section 87(2)(a)(ii) of the Housing SEPP is not excluded from the operation of clause 4.6 of the BMLEP 2015.

## 4. Extent of variation

The proposed development has an FSR of 0.663:1 being a 0.183:1 or 38% variation of the 0.48:1 standard.

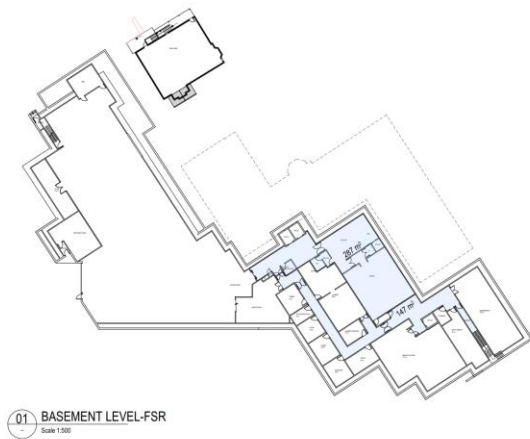
The gross floor area (GFA) is 7,489sqm being a 2,065sqm variation of the permissible GFA of 5,424sqm.

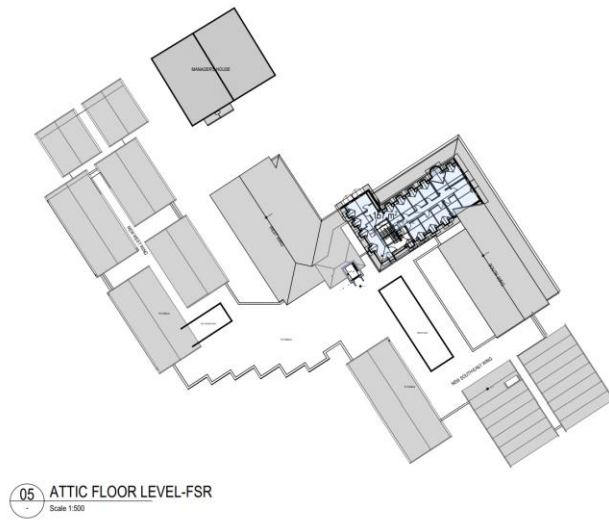
The following table provides a breakdown of the proposed GFA/FSR.

**Table 1: GFA/FSR level-by-level**

Level	GFA
Basement	434sqm
Lower ground	2,071sqm
Ground	2,525sqm
Level 1	2,302sqm
Level 2	157sqm
Total	7,489sqm or 0.663:1

PBD Architects have prepared a GFA plan in Appendix 7 and is extracted below.





GFA LEVEL	AREA
BASEMENT LEVEL	434
LOWER GROUND FLOOR LEVEL	2,071
GROUND FLOOR LEVEL	2,525
FIRST FLOOR LEVEL	2,302
ATTIC FLOOR LEVEL	157
	7,489 m <sup>2</sup>

TOTAL SITE AREA M <sup>2</sup>
11,300

FLOOR SPACE RATIO	
TOTAL SITE AREA	11300 M <sup>2</sup>
GROSS FLOOR AREA	7489 M <sup>2</sup>
TOTAL FSR	0.663 : 1

**SEPP HOUSING 2021**

**Division 2 Preliminary**

**82 Definitions**

(1) In this Part-

**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 another building, measured at a height of 1.4m above the floor-

(a) excluding the following-

(i) columns, fin walls, sun control devices and elements, projections or works outside the general lines of the internal face of an external wall,

(ii) cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts,

(iii) car parking and internal access to the car parking,

(iv) space for the loading and unloading of goods, including access to the space,

(v) areas for common vertical circulation, including lifts and stairs,

**Figure 6** Extract drawing 501 (Source: PBD Architects)

## **5. Unreasonable or unnecessary**

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by section 87(2)(a)(ii) of the Housing SEPP.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)*.

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (first test)
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (second test)
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (third test)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (fourth test) and
5. The zoning of the land is unreasonable or inappropriate. (fifth test)

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) (*Wehbe v Pittwater Council [2007] NSWLEC 827*, *Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22]* and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]*) and *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31]*).

Nonetheless, we have considered each of the ways as follows.

### **5.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard.**

Section 87(2)(a)(ii) of the Housing SEPP sets the maximum permissible FSR for development on the site as the site/proposal complies with section 87(1) of the Housing SEPP as:

- In accordance with s87(1)(a) the development for the purposes of a residential flat building is permitted with development consent in the R1 General Residential zone which applies to the land; and
- S87(1)(b) is not applicable.

As set out in section 3 of this request, the additional 20% FSR afforded under s87(2)(a)(ii) of the Housing SEPP is in addition to the BMLEP FSR standard of 0.4:1 in clause 4.4.

Chapter 3 Diverse Housing, Part 5 Housing for seniors and people with a disability does not include any aims or objectives. However, Chapter 1, section 3 of the Housing SEPP sets out the 'principles of the policy' which includes as *relevant* to a seniors housing development:

*"The principles of this Policy are as follows—*

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*

*(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,”*

The proposal is consistent with the principles of the Housing SEPP as:

- The development, as it varies the FSR standard, delivers much needed seniors housing in the Blue Mountains LGA. Of note, Leura has the highest median age in the Blue Mountain region at 55 years. The 70- 64 years age group in the LGA has grown by 29.1% since 2016, with an additional 1,122 people. The supply of seniors housing in response within the LGA has remained largely unchanged (until now)) (achieving (a) and (b));
- The proposal has been designed to achieve a high level of amenity for the future residents of the RCF and appropriately manages' impacts to neighbours. The variation is in the public interest as it allows the provision of RCF rooms and communal spaces that meet modern seniors housing standards (achieving (c));
- The site is currently in a very poor and unusable condition. The proposal seeks to deliver new seniors housing in the Blue Mountains which has not be provided in over 20 years and is walking distance from the Leura village. The development also includes various on-site facilities for the future residents (achieving (d));
- The development, as it contravenes the FSR standard, aims to reduce potential negative impacts by:
  - Enhancing local level of biodiversity through native planting.
  - Reducing the urban heat island effect through large-scale landscape provision.
  - Eliminating stormwater pollutants through the implementation of water sensitive urban design principles.
  - Reducing exposure to indoor pollutants and toxins.
  - Maximising solar energy opportunities through the provision of photovoltaic panels on the rooftop.(addressing (e)).
- The building, as it varies the FSR standard, has been designed to:
  - Sensitively respond to the historical roof form on the site; both in the way the new building has been planned on the site and how the elevations have been treated with vertical roof forms (i.e. gables) and complementary materials.
  - The development is therefore compatible with the heritage characteristics of the site and is further enhanced by the proposed restoration. The proposal is a high quality 'village' at the end of Leura Mall which responds to the heritage charm of the town and delivers a high quality architectural, heritage and landscape outcome.
  - The development does not represent an overdevelopment being 0.337:1 below the non-discretionary FSR of 1:1 in s107(2)(c) of the Housing SEPP.(addressing (f)).



Figure 7 View from Leura Mall (Source: Rock Hunter)



Figure 8 View from Megalong Street (Source: Rock Hunter)



Figure 9 View from Megalong Street (Source: Rock Hunter)

(addressing (f)).

In this respect, the principles of the Housing SEPP are achieved because of (and notwithstanding) non-compliance with the standard.

Compliance with the development standard is unreasonable or unnecessary for this reason.

## **5.2 The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.**

The underlying objective or purpose is to provide additional FSR to enable the provision of a compatibly designed seniors housing development which restores and enhances the heritage characteristics of the site. The underlying objective or purpose is relevant and therefore is not relied upon in the context of this reason.

## **5.3 The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.**

As discussed in section 5.1 and 5.2, the underlying principle of the standard is to provide additional FSR to deliver new senior housing and, in the case of the site, a high-quality restoration project. If the maximum FSR standard is not varied, the quality of the modern RCF would be compromised and an incompatible and inferior built form and heritage outcome would result on the site.

Compliance with the development standard is unreasonable or unnecessary for this reason.

**5.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.**

The development standard has not been virtually abandoned or destroyed.

**5.5 The zoning of the land is unreasonable or inappropriate.**

The zoning of the land (R1 General Residential and with seniors housing therefore permissible via Chapter 3, Part 5 of the Housing SEPP) is appropriate.

We do not rely on this reason.

## 6. Sufficient environmental planning grounds

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

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

The environmental planning ground to justify the departure of the height of buildings development standard are as follows:

- **Objects of the Act**

The proposed variation in the subject development is consistent with, and a direct response to, the following objects of the *Environmental Planning and Assessment Act 1979*:

*(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,*

The proposal provides new senior housing in the Blue Mountains, which contributes to the diversity of housing stock and addresses the significant demand. The Blue Mountains LGA has a significant ageing population with 3,609 people over the age of 80 living in the LGA in 2021, with this number expected to increase to 7,441 people (+ 3,832) by 2035. The predominant dwelling in the LGA is detached dwelling houses. The average number of bedrooms per dwelling in 2021 was 3.3, with an average number of persons per household 2.4.

The Council's Local Strategic Planning Statement and Housing Strategy acknowledges these statistics and characteristics of the LGA. The proposed additional 136 RCF beds will greatly benefit the older age groups that require care and their families. There are added benefits of ageing in place. The proposed RCF seeks to retain and restore the existing heritage building and therefore the design development of the new structures has sought to sympathetically respond to these intrinsic heritage characteristics. The proposal, as it varies the FSR standard, has been designed to sit sympathetically on the site and respond to its valued heritage context. The proposal, as it contravenes the standard, promotes the social and economic welfare of the community in delivering seniors housing in the LGA which has not come forward in 20 years.

The state's natural resources are unaffected by the proposal, including its proposed variation.

*(c) to promote the orderly and economic use and development of land,*

The variation of the FSR standard assists in facilitating the orderly and economic use and development of the land as is evident in the restoration of the existing Ritz and how the proposal responds to the relevant principles of the Housing SEPP.

The proposal complies with non-discretionary FSR standard of 1:1 in s107(2)(c) of the Housing SEPP and therefore does not represent an overdevelopment.

These relevant principles would be undermined if compliance with the FSR standard were required and, in fact, would not be possible without the demolition of the heritage affected Ritz, which is considered of high significance. The variation of the standard promotes the orderly development of the land to deliver a RCF which respects the heritage qualities of the site, through restoration, and providing new elements which are complementary in their design and scale.

*(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Weir Phillips Heritage conclude in the accompanying Statement of Heritage Impact that the proposal, as it varies the FSR standard, represents a responsible and considered conservation strategy. The project delivers an adaptive reuse outcome that supports the long-term viability of the Ritz within a respectful, high quality landscape setting. Once completed, the project is anticipated to once again serve as the historic focal point of the Leura township. The variation of the standard is essential to restore the Ritz and deliver compatible new built form elements.

*(g) to promote good design and amenity of the built environment,*

The proposal, as it is non-compliant with the FSR standard, assists in the delivery of a high quality and modern RCF achieving current standards. PBD Architects articulate this in their Design Report which outlines the design approach taken to achieve a good level of design and amenity for the future residents on the site, their guests and nearby neighbours:

- The proposal, as it varies the FSR, has been carefully designed to reflect the operational and spatial needs of a RCF, which are inherently different from a standard residential building. The building form supports efficient care delivery while maintaining a domestic scale and character.
- The architectural language of the new works references the character of The Ritz without mimicking it, resulting in a village-like composition that enhances the prominence of the heritage building.
- The development maximises the provision of landscaping and reinstates the admirable landscape gardens which are characteristics of Leura. This landscaping, particularly the trees on the northern and western frontages, screen the non-compliant portions of the new building.
- The design promotes health and wellbeing through effective cross ventilation, optimised natural sunlight exposure and facilitated social connection. The proposal as it varies the FSR standard do not affect the achievement of this project objective.

*(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

It is worth observing that detailed coordination between the architectural team and key technical consultants, including landscape, civil, BCA, fire safety, façade and structural engineer, has been prioritised throughout the SSD preparation process. This integrated approach has ensured the construction methodologies are compatible with heritage retention objectives for the project, and that critical heritage fabric can be preserved in situ without unnecessary intervention or risk. The Proponent will utilise proper construction methods and materials to deliver the project. Refer to the accompanying technical SSD reports for further information.

- **Environmental impacts**

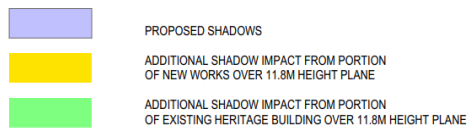
Overshadowing

PBD has prepared plan and elevation shadow diagrams which accompany this SSD (drawings DA610, DA611, DA620, DA621 and DA631). These clearly depict the shadow cast by the proposal, including its non-compliant height elements, at mid-winter.

- **At 9.00am mid-winter** – the proposal, as it varies the FSR standard, largely self-shadows the southern portion of the site, the eastern portion of Wascoe Street and the properties which sit to the south, given their position on the RAC's southern elevation. The shadow cast by the portion of the building which sits above the 11.8 metre height standard is assessed in the accompanying height of buildings clause 4.6.



**Figure 10** Extract of 9am shadow diagram (Source: PBD Architects)



- **At 12.00pm mid-winter** – the shadow has rotated resulting in improvements to the rear, principal POS of no.24 Wascoce Street which receives 203sqm of sun or 72% (of the 281sqm area) in mid-winter, this is comparable to the existing sun received of 214sqm. PBD has undertaken elevation shadow analysis of the two windows which sit on no.24's northern elevation (see drawing DA610). This demonstrates that at 12.20pm the two windows are not in shadow, see extract below.



Figure 11 Extract of 12pm shadow diagram (Source: PBD Architects)

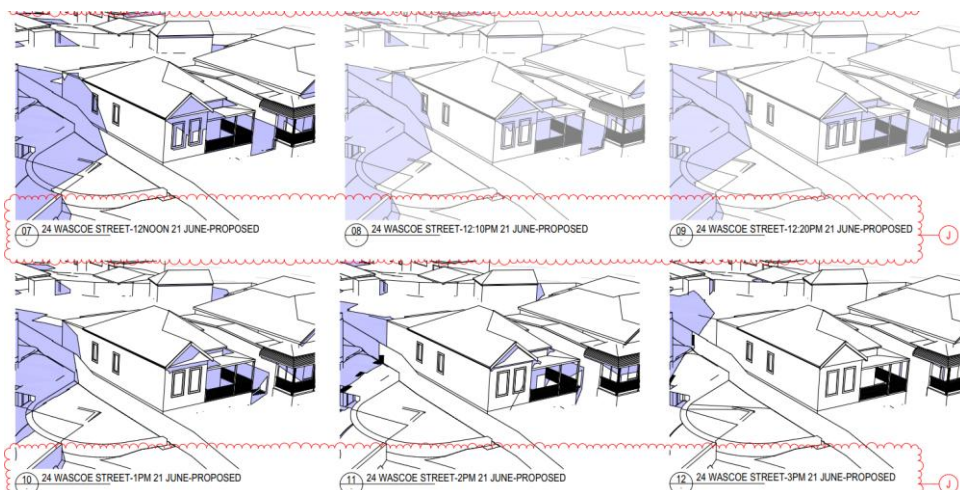


Figure 12 Elevation shadow diagrams (Source: PBD Architects)

- **At 3.00pm mid-winter** – the proposal causes some overshadowing of the Leura Mall road reserve and the south-east corner of the site. The two northern windows at no.24 are unaffected and the north-east corner of the garden is shaded. The rear POS receives 110sqm of sun being 52sqm less than the existing sun. As discussed in further detail in the RtS Report, this is considered acceptable when considering the sun received at other times during mid-winter and at equinox.



**Figure 13** Extract of 3pm shadow diagram (Source: PBD Architects)

### Privacy

The proposal, as it varies the FSR standard, does not give rise to privacy impacts. The amendments made to the project at this RtS stage improve the relationship with the adjoining property to the south (24 Wascoe Street).

## Visual impact

The proposal, as it varies the FSR standard, causes no visual impact. Section 7.1.5 of the EIS undertakes a detailed visual impact assessment. The chapter concludes:

- The investigations and visual impact assessment undertaken conclude that the degree of impact associated with the proposal is low to moderate when viewed from pedestrian vantage points within the immediate context of the site.
- The initial visibility investigations confirm that site visibility is limited due to the local landform and significant canopy coverage. However, given the scenic setting of Leura Village, this analysis also considers impacts to longer distance view lines to determine whether the proposal is likely to interfere with, or detract from, the visual quality of the townscape and the scenic landscape character of the area.
- None of the views considered in this assessment are deemed to deliver significant, severe or devastating impacts as the result of the proposed works. The analysis confirms that the proposal will not substantially alter the character, or composition, of public domain views representative of typical pedestrian views.
- The acceptability of the proposal's visual presentation is linked to the sensitive design approach adopted for the treatment of existing and new building fabric along with the consistent commitment to a high-quality landscape design approach as the dominant design feature.
- The site layout and detailed architectural solutions have been informed by the intent to minimise visual bulk impacts to surrounding areas, incorporating mitigation measures to alleviate bulk and maximise screening to surrounding areas.
- The architectural design and landscape solutions incorporate contemporary and elegant design features to convey a residential character that celebrates the uniqueness of existing heritage fabric. Through skilful design, the design has embraced the opportunity to renew the site through a faithful continuation of the historic use, incorporating innovative landscape motifs to improve the site's presentation to surrounding areas while also celebrating the identity of the landmark building and its contribution to local history.
- Leura is a lively village community and a well-known destination for local and international visitors, and a degree of change to the existing visual environment is considered acceptable, providing it is sympathetic to the local character. The proposal meets this principle.

## Heritage

The proposal, as it varies the FSR standard, facilitates the delivery of the restored Ritz building A1 and construction of a new complementary building.

- Architecturally, the new additions adopt roofscape inspired by varied forms of the Ritz.

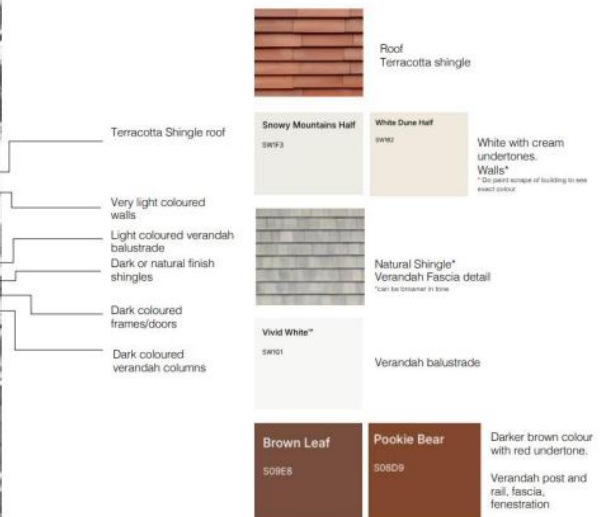


**Figure 14** How the varied roof pitches of the existing building were used to influence the form of the new additions (Source: PBD Architects)

- PBD Architecture propose sympathetic materials and finishes to reinstate the significance and quality of the Ritz building.



Colour Scheme inspired by 1914-15 imagery



**Figure 15** The Ritz colour scheme (Source: Weir Phillips Heritage)

- In doing so, the design establishes an overall built form which is a cohesive 'campus'/'village' within the finer-grained Leura townscape, while reinforcing the prominence and landmark qualities of the Ritz, the most substantial and historically significant building in central Leura.



Figure 16 Campus/village like style of the development looking south-east (Source: PBD Architects)

- **Acceptability of previous variation**

In September 2021, a regionally significant development application (RSDA) (ref. X/1436/2021) for the continued use and restoration of 'The Ritz' estate as a high-quality RCF was submitted to Blue Mountains Council. The RSDA was refused by the Sydney Western City Planning Panel and became subject of NSW Land and Environment Court (NSWLEC) proceedings 2023/00030525.

In the previous application for the site (ref.X/1436/2021 / NSWLEC proceedings 2023/30525) the Commissioner found that the proposed FSR of 0.64:1 or 7,328.6sqm was acceptable from a density perspective. The former proposal similarly restored the heritage building and proposed new building.

The current proposal is ever so slightly (0.023:1()) above the previous density deemed compatible with the context (refer to *Skermanic Pty Ltd v Blue Mountains City Council* [2024] NSWLEC 1031 judgement). The now proposed FSR 0.663:1 accounts for the attic space and sits within a built form which is a more superior heritage design response to the site.

For completeness, the size of the variation is not in itself a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

## 7. Conclusion

This request for variation to the floor space ratio development standard is made pursuant to clause 4.6 of the BMLEP and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the proposed development; and
- There are sufficient environmental planning grounds to justify the contravention of the development standard.

Importantly, the variation facilitates the achievement of the principles of the Housing SEPP (section 3) which is to enable the development of diverse housing types including for seniors, provide a reasonable level of amenity and design it in such a way that it reflects and enhances its locality.

For the reasons set out in this request, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.