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1. Introduction

This is a written request (the Request) to seek a variation to a development standard in pursuant to Clause 4.6 Exception to Development Standards of the *Ryde Local Environmental Plan 2014* (RLEP 2014) in support of a State Significant Development Application (SSDA) for a mixed-use development at 2–4 Giffnock Avenue, Macquarie Park (SSD-79017211) (the site).

This request relates to the maximum floor space ratio (FSR) development standard set out in Clause 7.13(3) of the RLEP 2014 which prescribes that:

(3) The floor space ratio of buildings on a site on land to which this clause applies may be up to the floor space ratio shown for the land on the Macquarie Park Incentive Floor Space Ratio Map.

In this regard, the maximum FSR applicable to the site under Clause 7.13(3) is 4.75:1.

The SSDA was publicly exhibited between 2 December 2025 to 15 December 2025. Following exhibition, on 5 February 2026, the Department of Planning, Housing and Infrastructure's (DPHI) issued its key issues letter and requested a response to those matters. Specifically, DPHI stated:

The Department has considered the advice of the State Design Review Panel and notes that several design issues remain unresolved. You are requested to provide a detailed response to the issues raised in the State Design Review Panel (SDRP) Review 3 minutes dated 28 October 2025.

Accordingly, the proposed development has been amended in response to the matters raised in SDRP Review 3 and DPHI's Key Issues Letter. The revisions include targeted refinements to building height and massing, forming part of an integrated design response that seeks to achieve design excellence in accordance with Clause 6.13 of the RLEP 2014.

Specifically, the amendments enhance the architectural expression of the development through increased articulation and greater height variation between the towers. These refinements result in a more resolved built form that better mitigates perceived scale, bulk and visual impacts.

The proposed FSR is as follows:

- 5.97:1 (including the 1,000m² land to be dedicated for the purpose of a future pedestrian and cycle bridge)
- 6.49:1 (excluding the 1,000m² land to be dedicated)

The proposed FSR has been developed in conjunction with the proposed variation to the height of building development standard and represents a coordinated design response. A separate Clause 4.6 application has been prepared for this proposed height variation (refer to Appendix 2 of the Response to Submissions Report).

Further, the site is located on a “Key Site” within the Macquarie Park Accelerated Transport Oriented Development (TOD) Precinct which is a State government planning initiative designed to accelerate housing delivery and mixed-use renewal on strategically located sites.

This Request has considered the detailed guidance within the DPHI’s *Guide to Varying Development Standards, November 2023* (DPHI Guide) and addresses established principles (as relevant) in the following judgements of the NSW Land and Environment Court (the Court):

- *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070
- *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189
- *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131

The following sections of this Request critically analyse the proposed FSR variation, its impact and reasonableness.

This analysis demonstrates that an exception to the maximum FSR development standard is warranted in this instance.

2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) includes various development standards as a means of achieving environmental planning objectives.

Clause 4.6 of the Standard Instrument allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPHI Guide recommends that any request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. Table 1 below provides a summary of the relevant planning context and provides an overview of the proposed variation.

Information Requirement	Comment
Relevant Applicable Planning Instrument	RLEP 2014
Zoning of the Land	- Part MU1 Mixed Use - Part E2 Commercial Centre In accordance with Clause 4.5(4)(a) of the RLEP 2014 (Calculation of FSR and site area), the E2 zoned land in the south-eastern corner of the site has been excluded from the FSR calculations as shop-top housing is prohibited in the E2 zone. Importantly, the inclusion of this land would significantly reduce the proposed FSR. This matter is further addressed in Section 4.1.
Objectives of the Zone	The objectives of the zone MU1 are: <i>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</i> <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i> <i>To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.</i> <i>To promote strong links between Macquarie University and research institutions and businesses in the Macquarie Park corridor.</i>
Development Standard to be Varied	Clause 7.13(3) of the RLEP 2014

Information Requirement	Comment
Nature of the Development Standard	A numerical FSR control
Objectives of the Development standard	Part 7, Clause 7.13 does not explicitly identify objectives of the development standard to be varied. Notwithstanding, Clause 4.4 of the RLEP 2014 outlines objectives, which are relevant to the maximum FSR, and therefore relevant to this Request. The objectives of FSR controls as set out in Clause 4.4 are: • <i>to provide effective control over the bulk of future development;</i> • <i>to allow appropriate levels of development for specific areas; and</i> • <i>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.</i>
Development Standard Numeric Control for the Site	4.75:1 (refer to Figure 1); including a minimum non-residential FSR of 0.2:1 (pursuant to Clause 7.6 of the RLEP 2014)
Proposed Numeric Control	6.49:1
Percentage Variation Between the Proposal and the Planning Instrument	36.6%

Table 1: DPHI Guide recommended planning information and numeric overview

Part 7, Division 2 of the RLEP 2014 applies to key sites within the Macquarie Park TOD precinct.

Clause 7.13 of the RLEP 2014 applies to the site, as it is identified as 'Area 6' on the Key Sites Map. Pursuant to Clause 7.13(3), a maximum FSR of 4.75:1 is permitted on the land, subject to compliance with subclause (4). Subclause 7.13(4) provides that subclauses (2) and (3) do not apply unless the consent authority:

- (a) *is satisfied that at least 3,025m² of the site area will be used for the purposes of a single recreation area, and*
- (b) *is satisfied that at least 1,000m² of the site area will be used for the purposes of road infrastructure facilities, and*
- (c) *has obtained the concurrence of Transport for NSW.*

Concurrence from Transport for NSW (TfNSW) is also sought in accordance with subclause (4)(c) as part of the SSDA. The Applicant met with TfNSW on 25 June 2025 and 4 March 2026 to obtain feedback, which has been considered within the proposed design.

On this basis, the maximum FSR of 4.75:1 under Clause 7.13(3) is applicable to the proposed development.

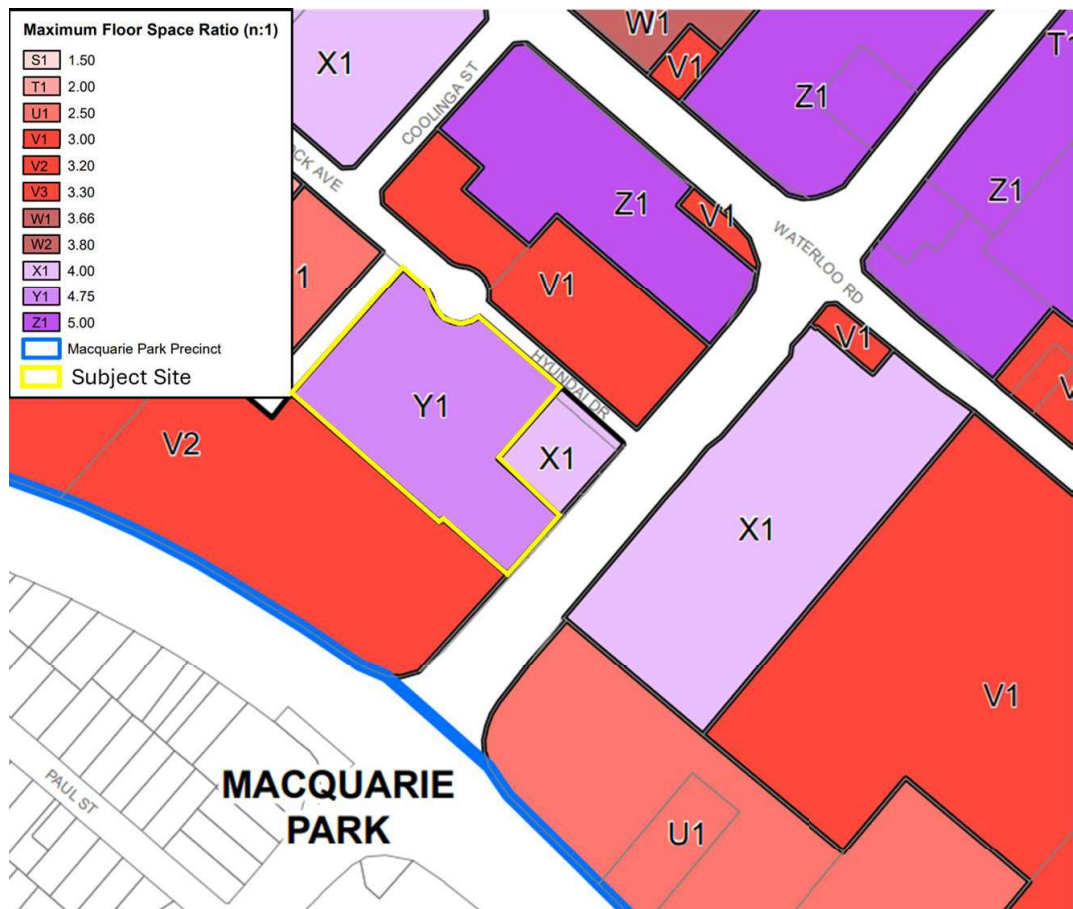


Figure 1: Incentive Floor Space Ratio Map (Source: RLEP 2014)

3. Background

The SSDA was publicly exhibited between 2 December 2025 to 15 December 2025.

Following exhibition, on 5 February 2026, DPHI issued its key issues letter and requested those matters be responded to. Specifically, DPHI requested a response to the SDRP 3 comments (see extract below, bold our emphasis):

The Department has considered the advice of the State Design Review Panel and notes that several design issues remain unresolved. You are requested to provide a detailed response to the issues raised in the State Design Review Panel (SDRP) Review 3 minutes dated 28 October 2025. This is to include updated architectural plans and a design report demonstrating how the proposal responds to the SDRP advice and achieves design excellence.

*In obtaining a design competition exemption you are required to address the advice and recommendations of any design review process, including that from the SDRP. **The response should address matters relating to building height (including consideration of increased height differentiation between the towers), bulk, separation, articulation, and impacts on residential amenity and the public domain.***

Accordingly, as noted in Section 1, design has been amended as part of a considered design response to SDRP feedback, enabling improvements to building mass (GFA/FSR), tower articulation, proportions and building separation, as well as enhanced amenity outcomes for future residents.

As a result of the design refinements, the proposed FSR has increased marginally by 0.11:1 (from 6.38:1 to 6.49:1). This uplift is minor in nature and is attributable to targeted design improvements, without resulting in any discernible additional impacts in terms of bulk, scale or amenity.

Further, Studio SC note:

The proposal strengthens the architectural expression through clearer height articulation, breaking down the overall mass into a more legible and human-scaled composition. This is complemented by an increased richness in material variation, aligning with design excellence objectives and creating a more refined and contextually responsive façade. The material palette and detailing have also been refined to better reflect and embed Connecting with Country narratives, fostering a stronger relationship to place, culture, and landscape.

Importantly, the refined built form facilitates the delivery of key public benefits, including the provision of affordable housing and high-quality communal and publicly accessible open spaces, while supporting an efficient and appropriate use of land within the Macquarie Park Accelerated TOD Precinct.

Detailed assessment and justification of the proposed FSR is provided in Section 7.

4. Site overview

The site is located at 2-4 Giffnock Avenue, Macquarie Park, in the Ryde LGA. It is legally described as Lot 1 in DP1310550.

As shown within the figure below, Lot 1 in DP1310550 comprises the land within the yellow outlined area. This SSDA relates to part of Lot 1 in DP1310550 and is referred to as 'the site' throughout this report. The site has an area of 12,386m² and is irregular in shape.

The site location and surrounding context are shown within the figure below.

The site currently comprises a 2-storey commercial building, a carport, two single storey dwellings used for commercial purposes, vegetation and at grade parking throughout the site.

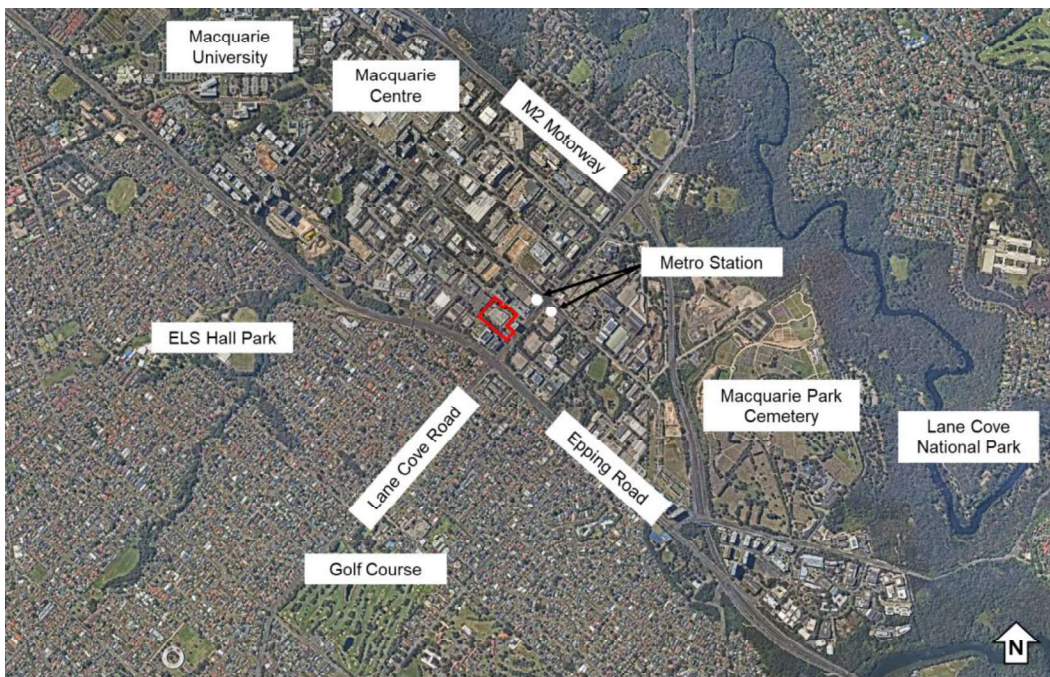


Figure 2: Subject site and Surrounding context (Source: Nearmap)

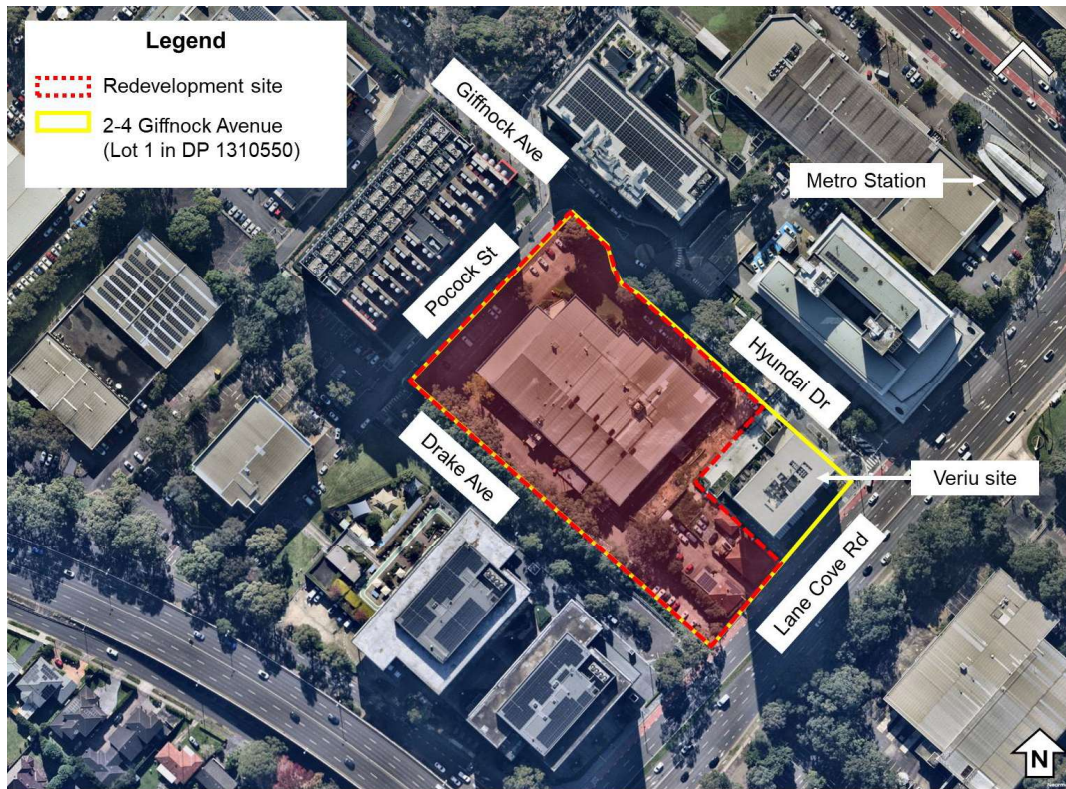


Figure 3: The site (Source: Nearmap)

5. Proposal

5.1. Proposed development

The proposed development comprises the following:

- demolition of two existing single storey buildings, one x two storey building and one car port and at-grade carparking
- site preparation and excavation work
- construction of two towers (1 x 49 storey tower incorporating a 10 storey element (referred to as Tower A1 and Tower A2) and 1 x 42 storey tower (referred to as Tower B)). The towers comprise:
 - a single basement, comprising 6 parking levels to service the entire development
 - ground floor retail premises
 - ground floor residential amenities and services
 - a centre based childcare centre (located on both ground and level 1 of northeastern (Tower B) only) accommodating 120 children and 20 staff
 - residential accommodation on the remaining levels (comprising a total of 745 units) and dedication of 5% affordable housing units in perpetuity)
- landscaping and communal open space
- associated infrastructure and services
- streetscape upgrades including road widening to Drake Avenue by 2.5m (equivalent to 273m²) and Hyundai Drive by 4m (equivalent to 258m²)
- dedication of land for road infrastructure and open space purposes (equivalent to 4025m²) pursuant to Clause 7.13 of the RLEP 2014 and the Macquarie Park Design Guide
- embellishment of the dedicated open space area
- easements for access and maintenance to the new substation and for the new pipe over the dedicated recreation area
- subdivision to create a separate lot, known as the 'Veriu site'

Importantly, the site area excludes the 'Veriu' site identified in Figure 4. It should be noted that the 'Veriu' site will achieve compliance with the respective FSR control as a result of the proposed subdivision.

A detailed description of the proposed development is provided within the EIS and an indicative photomontage of the proposal is provided in the figure below.



Figure 4: View of the proposal looking southeast (Source: Studio SC)

5.2. Proposed variation

As noted above, the proposed maximum FSR is 6.49:1, which results in a 36.6% variation from the RLEP 2014 standard of 4.75:1.

The FSR has been calculated in accordance with Clause 4.5(4)(a) of the RLEP 2014, which requires land on which the proposed development is prohibited to be excluded from the site area calculation. As noted within the EIS, shop-top housing is prohibited on a portion of the site (zoned E2 commercial centre).

Importantly, if this land was included, the proposed FSR would be significantly reduced to 5.97:1 (25.7% variation).

This exclusion is considered an anomaly, as the entire site, including the E2 zoned area, was considered in the *Macquarie Park Innovation Precinct Stage 2 Urban Design*

Framework GFA calculations, which was the investigation undertaken to inform the Macquarie Park TOD controls, including FSR. Therefore, the intent of the TOD controls clearly envisaged the inclusion of the E2 zone in the FSR calculation.

A breakdown of the proposed GFA is provided below:

- childcare: 1,672m²
- retail: 1,904m²
- residential Tower A: 39,448m²
- residential Tower B: 30,891m²
- **total: 73,915m²**

As noted, the proposal provides 3,576m² of non-residential GFA (0.29:1), providing greater than the minimum non-residential requirement of 0.29:1.

A detailed analysis on the proposed GFA is provided in the Architectural Plans prepared by Studio SC.

6. Legislative Context

6.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the RLEP 2014 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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.*

Subclauses (3) and (4) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

6.1.1. Clause 4.6(3)

Clause 4.6(3) requires that 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.*

6.1.2. Clause 4.6(4)

Clause 4.6(4) requires that the consent authority to keep a record of its assessment carried out under subclause (3).

6.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070
- *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189
- *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131

The key findings and established principles (as relevant) of the above judgements of the NSW LEC are summarised below.

6.2.1. Wehbe v Pittwater Council (2007)

This case establishes five potential grounds ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

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; or
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

6.2.2. Initial Action Pty Ltd v Woollahra Municipal Council (2018)

Initial Action Pty Ltd v Woollahra Municipal Council [2018] (Initial Action) further clarifies the correct approach for the consideration of clause 4.6 requests. Clause 4.6 does not require that a development that contravenes a development standard to have a *neutral or better* environmental planning outcome than a fully compliant development.

A legal consequence of the decision in *Initial Action* is that Clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

In *Initial Action*, the Court also confirmed that the five common ways of establishing that compliance with a development standard is unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) continue to apply.

6.2.3. Linfield Developments Pty Ltd v Cumberland Council (2019)

The ‘third’ Wehbe test is concerned with the underlying object or purpose of the development standard and that it would be defeated, thwarted or undermined if strict compliance was required. The reference to ‘undermined’ is an extension of Wehbe which was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]) (Linfield). In Linfield, the court found that:

“...requiring compliance would thwart or undermine at least one of the objectives of the height control development standard...”

6.2.4. SJD DB2 Pty Ltd v Woollahra Council (2020)

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* (SJD) established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. This case concluded that the numerical controls and objectives associated with development standards should not be used to strictly define desired future character. One relevant outcome of the case was that other provisions of the local environmental plan as well as development in the area that contravenes the development standard can indicate the desired future character of an area.

6.2.5. Big Property Pty Ltd v Randwick City Council (2021)

Big Property Pty Ltd v Randwick City Council [2021] NSWLEC 1161 (Big Property) is also a relevant case associated with a clause 4.6 request in the context of the desired future character of an area. This judgement followed *SJD DB2* and affirmed that the desired future character should not solely be determined by the development standards that control building envelopes, stating:

“...As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development...”

6.2.6. HPG Mosman Projects Pty Ltd v Mosman Municipal Council (2021)

Similar to the *Big Property* case, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243* (HPG) a clause 4.6 request was considered in the context of desired future character. This case determined that desired future character of an area can be evaluated by reference to matters other than the controls and objectives of the development standard.

“...The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site”.

7. Assessment of the Variation to Floor Space Ratio Development Standard

The RLEP 2014 sets a FSR development control of 4.75:1 (including 0.2:1 non-residential FSR) for the entire site.

The proposal seeks to increase the maximum FSR development control by 1.74:1 (6.49:1) to address the SDRP's comments and accommodate a built form that is appropriate for the conditions of the site and its context, both physically and strategically.

Importantly, without the proposed FSR variation the development would not be feasible, as strict compliance would reduce development yield to a point where the project could not viably deliver the desired land use mix, design excellence or the level of public benefits envisaged for the site. The additional density is therefore essential to achieving a balanced and feasible outcome that aligns with the strategic planning framework and optimises the site's capacity.

The FSR has been calculated in accordance with Clause 4.5(4)(a) of the RLEP 2014, which requires land on which the proposed development is prohibited to be excluded from the site area calculation. As noted within the EIS, shop-top housing is prohibited on a portion of the site (zoned E2 commercial centre) and therefore excluded from the site area calculation.

It is noted that if this land was included, the proposed FSR would be significantly reduced to 5.97:1 (25.7% variation).

Notwithstanding this, the exclusion is considered an anomaly, as the entire site, including the E2 zoned area, was considered in the Macquarie Park Innovation Precinct Stage 2 Urban Design Framework GFA calculations, which was the investigation undertaken to inform the Macquarie Park TOD controls, including FSR. Therefore, the intent of the TOD controls clearly envisaged the inclusion of the E2 zone in the FSR calculation.

The following assessment comprehensively considers the provisions of Clause 4.6 with regard to the relevant case law.

7.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

Wehbe establishes at least five potential alternative grounds to ascertain whether strict compliance with a development standard is unreasonable or unnecessary. An assessment against the relevant tests is provided below to outline how compliance with the FSR development standard is unreasonable and unnecessary.

As previously noted, Clause 7.13 of the RLEP 2014 does not expressly prescribe objectives for the development standard proposed to be varied. Notwithstanding, Clause 4.4 establishes the objectives of the FSR development standard, which is considered to be of a comparable nature to the proposed development standard. As such, Clause 4.4 is relied upon for this assessment.

7.1.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the FSR development standard will be achieved notwithstanding the non-compliance with the standard as outlined at Table 2.

Objectives	Achievement of Objectives
(a) <i>To provide effective control over the bulk of future development</i>	- the proposed floor space has been accommodated in a way that distributes built form across the site to avoid a single dominant massing and instead presents in two slender tower forms. - the development adopts slender tower forms with articulated massing to reduce perceived bulk and scale, allowing for improved solar access, view sharing (including to Lane Cove National Park) and a more refined skyline outcome at the Metro gateway. - towers are well-separated and sit above a defined podium, ensuring a clear distinction between built form elements and minimising visual bulk when viewed from the public domain. - podium edges are scaled and activated to reinforce street-level vibrancy, while setbacks and landscape buffers provide a softer, green interface to surrounding streets. - generous building separation distances are implemented, facilitating a 21.3m wide through site link traversing through the site. - the ground plane is designed to be active, delivering new public domain linkages, landscaped edges, and a strong interface with the future parklands. - the proposal continues to provide an acceptable level of solar amenity consistent with the objectives of minimising amenity impacts on surrounding properties. - accordingly, the proposal demonstrates that effective bulk control is maintained despite the numerical non-compliance.
(b) <i>To allow appropriate levels of development for specific area</i>	- the proposed FSR facilitates an appropriate level of development for the site, having regard to its significant size (12,386m²) which enables a well-planned, high density outcome without resulting in excessive bulk or overdevelopment. - the proposed density is appropriate considering the site is strategically located within the Macquarie Park TOD to effectively accommodate increased density. - the site is located in a highly accessible and well-served area, being within 150m of the Macquarie Park Metro Station and nearby both the M2 and Epping Road, both of which are major arterial roads. - the proposed density does not compromise the delivery of high-quality public open space and generous landscaping across the site. - the proposal achieves an FSR of 6.49:1, resulting in a 36.6% variation to the standard, which is considered appropriate given the site's strategic context and capacity to accommodate additional development without adverse impacts.

Objectives	Achievement of Objectives
(c) <i>In relation to land identified as a Centre on the Centres Map – to consolidate development and encourage sustainable development patterns around key infrastructure</i>	- the site is located within the Macquarie Park Corridor within the Centres Map. - despite the noncomplying FSR, the proposed development directly achieves the objective by providing a high-quality mixed-use space consisting of commercial and residential floor spaces. - the 3,576m² of non-residential gross floor space (equivalent to 0.29:1 FSR) is dedicated to retail uses on the ground floor, contributing to the vibrancy of the site, and a childcare centre to benefit the broader community. This provision is greater than the minimum non-residential requirement (0.2:1) required under the RLEP 2014. - the remainder of the floor space is dedicated to residential apartments, including affordable homes, which aligns with the State's direction for the Macquarie Park TOD Precinct, which has capacity for 9,600 new homes.

Table 2: Consistency with Clause 4.4 development standards objectives

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge said (at [34]) that:

establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary.

In this matter it has been demonstrated that the contravention does not cause any material environmental harm (of a kind that the objectives seek to avoid).

7.1.2. Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

N/A.

7.1.3. Wehbe Test 3: The underlying object or purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable

Strict compliance with the 4.75:1 development standard would defeat, thwart and undermine the underlying object or purpose of the FSR development standard. This was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]).

If compliance were required, the design would need to be reconfigured to remove floor space in ways that could actually increase perceived bulk (e.g. reducing articulation, setbacks, or consolidating the tower elements).

Additionally, strict compliance would likely result in the underutilisation of the site given its scale, location and capacity. This would undermine the purpose of providing for “appropriate levels of development” in the strategic context, as it would artificially

constrain density where it has been identified as most appropriate. If compliance were required, the site would deliver less housing and employment opportunities in a highly accessible centre, pushing growth pressures elsewhere and foregoing the opportunity to provide additional housing on a highly accessible site.

That outcome undermines the strategic intent of consolidating development around key infrastructure, defeating the underlying object of Clause 4.4.

Overall, requiring strict compliance would undermine the objectives of Clause 4.4 by limiting the site's capacity to deliver a well-designed built form that effectively manages bulk, delivers an appropriate level of development in a strategically significant TOD Precinct, and reducing the opportunity to consolidate growth in proximity to key infrastructure. For these reasons, compliance with the FSR standard is considered unreasonable.

7.1.4. Wehbe Test 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

N/A.

7.1.5. Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

N/A.

7.2. Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard

The proposed development, including the FSR non-compliance, will provide for a high-quality mixed use residential building in a highly accessible location.

In this context, there are sound planning grounds and significant benefits to justify contravening the FSR development standard. These matters are discussed in detail in the following sections.

7.2.1. Improved Urban Design outcomes

Section 1.3(g) of the EP&A Act provides that it is an objective of the Act to:

to promote good design and amenity of the built environment ...

The proposed development has been designed in accordance with the planned capacity for the site and TOD precinct, which is essential in providing additional housing (including affordable) to assist in meeting housing targets under the Macquarie Park TOD and National Housing Accord.

Despite the proposed FSR variation, the development continues to satisfy the objectives and principles of the Macquarie Park Design Guide, as it:

- provides two distinct building forms rather than a single large footprint, allowing for slender tower forms, through-site links and landscaped areas
- incorporates variations in scale and articulation to create visual interest, built form diversity, and an enhanced interface with the public domain
- introduces lower-level setbacks to reduce perceived bulk and establish a clear podium–tower relationship
- minimises upper-level setbacks above podiums to avoid an overly fragmented or tiered appearance
- achieves full compliance with minimum setback requirements

In addition, the proposal makes a meaningful contribution to the Macquarie Park TOD by supporting the delivery of housing and employment growth targets identified in the rezoning documentation.

7.2.2. Consistency with surrounding locality

The proposed FSR is not uncharacteristic within the Macquarie Park context, particularly having regard to the uplift being pursued and approved across the TOD precinct. As summarised below:

- nearby sites are seeking or have achieved significantly higher FSRs, including:
 - 15-21 Cottonwood Crescent (14.5:1)
 - 3 Halifax Street (12.36:1).
- these sites are similarly located in terms of access to public transport, services and amenities. Notably, our site is 150m from the Macquarie Park Metro Station whilst:
 - 15-21 Cottonwood Crescent is within 200m of Macquarie University Station and Macquarie Centre
 - 3 Halifax Street is located further from the Metro (approximately 700m), yet accommodates a substantially higher FSR.
- further, a number of sites in close proximity such as 394 Lane Cove Road, 35-41 Waterloo Road and 3B Eden Park Drive, have FSRs of approximately 5:1.
- the proposed developments FSR of 6.49:1 represents a modest uplift above this range and sits comfortably within the emerging development pattern.
- the proposal remains well below the upper end of densities being contemplated within Macquarie Park, where FSRs of 12:1-14.5:1 are being pursued and approved.

Accordingly, the proposed FSR is consistent with the FSR framework established under the Macquarie Park TOD and reflects a precinct-wide approach. The proposed FSR does not represent an anomaly, but rather aligns with the scale of development anticipated across comparable sites (including HDAs), while demonstrating that the subject site can accommodate this density with appropriate built form, amenity, and public domain outcomes

An overview of the FSRs sought under the HDA and the controls applying under the Macquarie Park TOD is provided in the figure and table below.

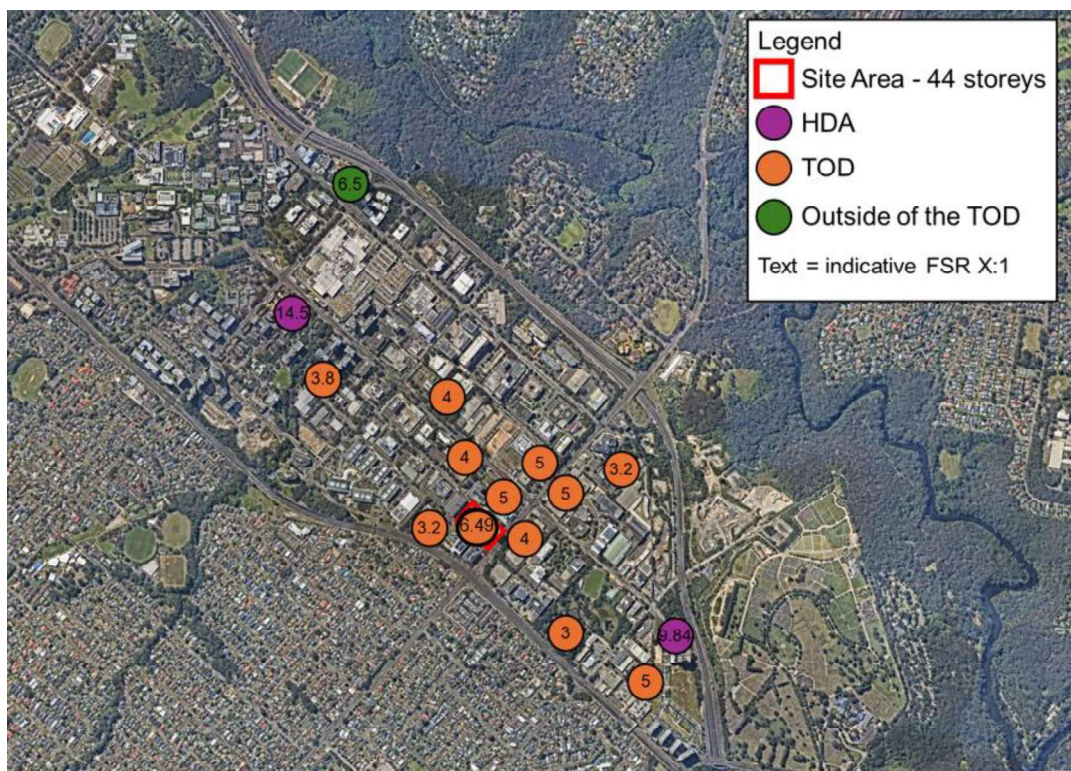


Figure 5: Comparative image of Macquarie Park FSR controls (Base Source: Nearmap)

Address	FSR	Base FSR for sites outside of the TOD
15-21 Cottonwood Crescent	14.5:1	4.5:1
6-8 Byfield Street	3.8:1	N/A
100 Talavera Road	6.5:1	3.5:1
6 Giffnock Avenue, 89-91 Epping Road	3.2:1	N/A
1 Khartoum Road	4:1	N/A
44-50 Waterloo Road	4:1	N/A
2-4 Giffnock Avenue (the site)	6.38:1	4.75:1
394 Lane Cove Road	5:1	N/A
269 Lane Cove Road	4:1	N/A
35-41 Waterloo Road	5:1	N/A
3B Eden Park Drive	5:1	N/A
144 Wicks Road	3:1	N/A
1, 3 and 5 Talavera Road	3.2:1	N/A
Part 113 and 111 Wicks, Part 31-35 Epping Road	5:1	N/A
29 Epping Road		
3 Halifax Road	9.84:1	12.36:1

Table 3: Macquarie Park key sites and HDAs floor space ratios

7.2.3. Strategic alignment and desired future character

Notwithstanding the proposed variation, the development remains entirely consistent with the future desired character of the Macquarie Park TOD Precinct.

The future desired character is informed by the strategic planning framework, including the National Housing Accord, Greater Sydney Region Plan, North District Plan, Ryde LSPS, and the Macquarie Park TOD Finalisation Report and Urban Design Guide which collectively identify Macquarie Park as a metropolitan centre and a key location for significant uplift in jobs and housing density in a location specifically identified for intensification. Strict compliance would not fully deliver the capacity anticipated for the precinct.

7.2.4. Environmental and amenity impacts

The building has been designed to maintain acceptable solar access, privacy, view corridors, and pedestrian comfort. The additional floor space has been accommodated without creating unreasonable adverse impacts on surrounding properties or the public domain.

Visual Impacts

The Visual Impact Assessment (VIA) prepared by Urbaine Design Group (Appendix 2) has found that there will be visual impacts resulting from the proposed development, particularly as this is the first of a series of new developments that are seeking approval in this area, in line with increased height limits. However, the visual impact will diminish over time, as other developments occur at a similar scale. The VIA concludes that the proposal satisfies the Council's guidelines for visual impact for residents and workers in the area.

Visually, the proposed GFA variation will not likely be perceived from the public domain. The building's form and slender profile integrate appropriately into the envisaged skyline consistent with the high-density context of the Macquarie Park TOD precinct.

Privacy Impacts

The proposal maintains generous separation distances between the development and adjoining sites, which are largely consistent with the ADG requirements. These setbacks ensure that the additional density does not create new or unreasonable privacy impacts. The design also incorporates appropriate orientation and modulation of facades / window placement to further protect the amenity of neighbouring properties.

Overshadowing

Shadow diagrams have been prepared by Studio SC which demonstrate that the proposed GFA (including variation) result in acceptable overshadowing impacts. The diagrams below show that the shadow extent occurs primarily within the public domain and does not materially affect adjoining residential properties.

Importantly, the overshadowing does not result in any significant loss of solar access to neighbouring dwellings, communal open spaces or key public areas. The diagrams below illustrate the overshadowing analysis of the proposed development on the surrounding context and Industrial Creek Woven Way North Park for June 21st. The analysis demonstrates that shadows cast on the park are minimal and comply with the requirement of providing at least 50% sunlight access between 10 AM and 2 PM.



Figure 6: Overshadowing diagrams (Source: Studio SC)

On this basis, the proposal continues to provide an acceptable level of solar amenity consistent with the objectives of minimising amenity impacts on surrounding properties while allowing for appropriate urban consolidation and development within the Macquarie Park TOD precinct.

Feasibility

Overall, a restriction on delivering a built form that appropriately responds to the evolving skyline of Macquarie Park, limiting opportunities for landmark architectural expression and integration into the high-density context of the precinct.

Strict compliance with the FSR standard would result in a likelihood of the site not being redeveloped as a result of feasibility which results in the loss of new critical open space, connectivity and public domain improvements on a key site within the Macquarie Park TOD.

7.2.5. Summary

On merit, there are no adverse impacts as a result of the proposed variation. Overall, the additional FSR is both reasonable and well founded as it:

- aligns with the intent of the TOD, which specifically seeks to increase density in this location
- is compatible with the surrounding built form, having regard to the uplift established under the Macquarie Park TOD controls
- is necessary to ensure the development remains feasible and deliverable
- provides public and design benefits that outweigh the need for strict compliance
- achieves a high-quality design outcome on a large, strategically located site that can comfortably accommodate the proposed building form without generating unacceptable impacts on the site or adjoining properties, while remaining consistent with surrounding heights
- will not give rise to any unacceptable environmental impacts

8. Conclusion

Clause 4.6 of the RLEP 2014 provides for flexibility in the application of development standards where it can be demonstrated that the objectives of the relevant standard are achieved notwithstanding a variation. This Request has been shown to satisfy the provisions of Clause 4.6(3), demonstrating that the proposed FSR variation from 4.75:1 to 6.49:1 achieves the objectives of the FSR standard while delivering significant strategic, social, and urban design benefits.

Strict compliance with the maximum FSR standard pursuant to Clause 7.13(3) of the RLEP 2014 would result in significant lost opportunities, including:

- A reduction in development yield, limiting the delivery of additional housing and employment in a key TOD precinct which is critical to supporting sustainable, public transport-focused growth in Macquarie Park
- A missed opportunity to achieve efficient land use and promote higher-density development in close proximity to public transport infrastructure, contrary to broader strategic planning objectives
- A less resolved urban design outcome, including reduced podium articulation, diminished street-level activation and limited landscaping opportunities, which would compromise the quality of the public realm and the overall pedestrian experience
- A potential inability to adequately accommodate design features that ensure minimal impact on the amenity of surrounding properties, including solar access, privacy, and view corridors, while maintaining compliance with ADG separation requirements and overshadowing benchmarks
- A restriction on delivering a built form that appropriately responds to the evolving skyline of Macquarie Park, limiting opportunities for landmark architectural expression and integration into the high-density context of the precinct
- A likelihood of the site not being redeveloped as a result of feasibility which results in the loss of new critical open space, connectivity and public domain improvements on a key site within the Macquarie Park TOD.

Given the above, the proposed variation not only meets the objectives of the relevant development standard but also provides significant public benefits, including increased housing supply, enhanced urban design outcomes and greater activation of the streetscape.

The built form (including the exceedance) is carefully designed to ensure that impacts on surrounding properties and the public domain are acceptable and consistent with the overarching planning intent for the Macquarie Park TOD precinct. On this basis, the variation represents an appropriate exercise of discretion under Clause 4.6 and can be supported as being in the public interest.

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site that is justified. Therefore, it is appropriate that the development standard be varied as proposed.