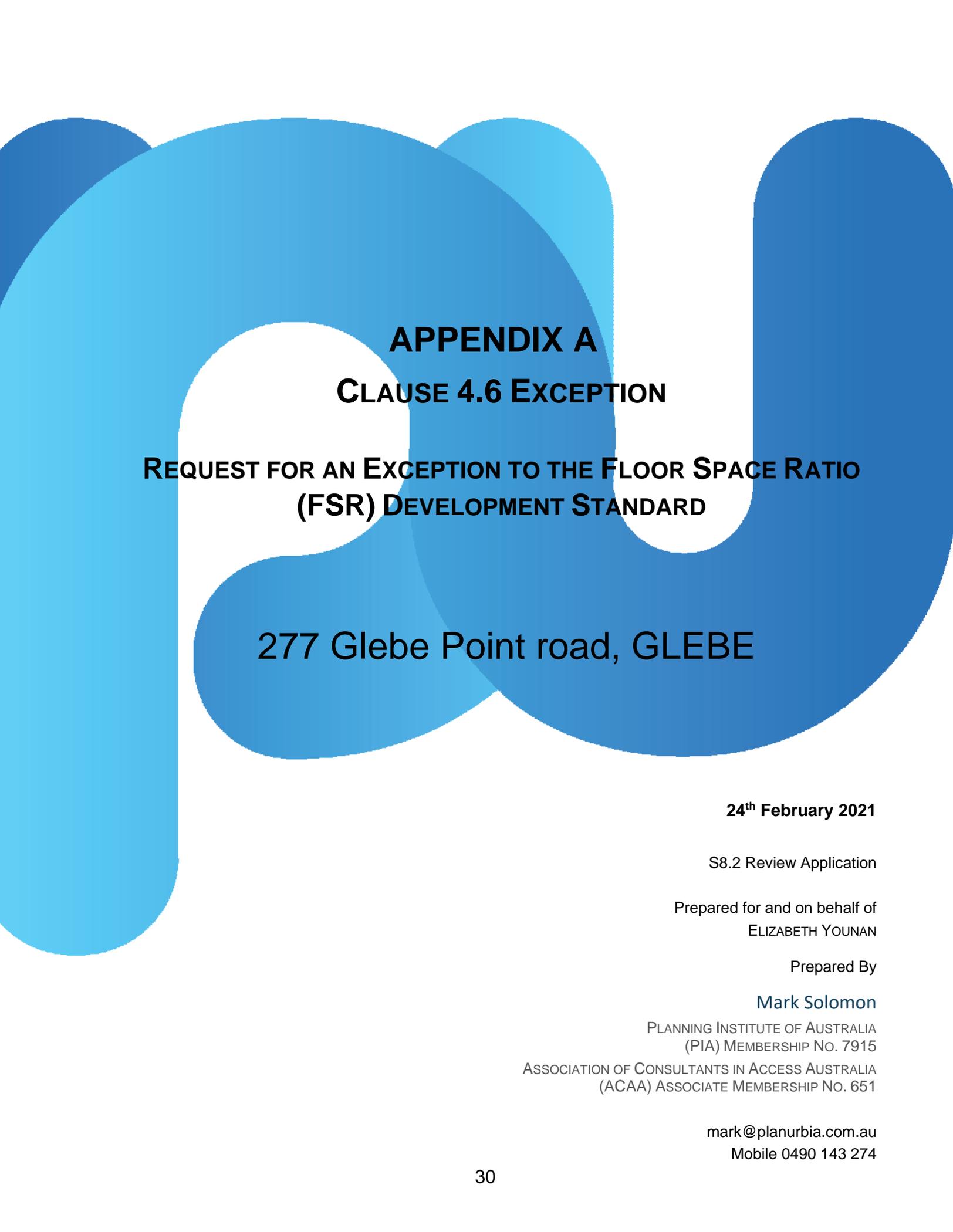


Attachment C

<p>Clause 4.6 Variation Request – Floor Space Ratio</p>
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APPENDIX A
CLAUSE 4.6 EXCEPTION

**REQUEST FOR AN EXCEPTION TO THE FLOOR SPACE RATIO
(FSR) DEVELOPMENT STANDARD**

277 Glebe Point road, GLEBE

24th February 2021

S8.2 Review Application

Prepared for and on behalf of
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Introduction

This request for an exception to a development standard is submitted in respect of the Floor Space Ratio development standard contained within Clause 4.4(2) of the *Sydney Local Environmental Plan 2012* (SLEP 2012).

The request relates to an application for the variation in the maximum floor space ratio (FSR) to facilitate the constructed storage shed located to the rear of the site known as 277 Glebe Point Road, Glebe.

Clause 4.6 Exceptions to Development Standards

Clause 4.6(2) of the SLEP 2012 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the SLEP 2012, or any other environmental planning instrument.

However, clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

In accordance with clause 4.6(3) the applicant requests that the maximum permitted floor space ratio (FSR) development standard contained within Clause 4.4(2) of the SLEP 2012 be varied.

Development Standard to be Varied

The specific objectives of the FSR development standard, as specified in clause 4.4 of the SLEP 2012 are identified below.

Clause 4.4(1) states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
 - (b) *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
 - (c) *to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
 - (d) *to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

Floor Space Ratio is defined under Clause 4.5 as:

“the ratio of the gross floor area of all buildings within the site to the site area”.

The maximum floor space ratio for the site shown on the map to which the proposed development relates is 0.7:1 (139.16m²), against a site area of 198.8m² (by Survey). The existing FSR of the site is 0.92:1 (183m²) and represents, and is contained wholly within the original terrace dwelling. It is noted that all terraces within the terrace group have a similar building envelopes, footprints and configuration and consequently share a similar FSR to that of the subject site.

The storage shed (as amended) adds an additional 7.95m² to the gross floor area, increasing the FSR to 0.96:1 (190.95m²).

Extent of Variation to the Development Standard

This request relates to provision of an additional 7.95m² of floor area contained within the detached storage shed structure located to the rear of the boarding house premise site.

Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

The Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 has recently required additional ways of establishing that compliance is unreasonable or unnecessary beyond consistency with the standard and zone objectives to be established. For completeness, this request addresses the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

A comment on the proposal's consistency with each objective is also provided below:

(a) *to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*

- The additional floor space results from the detached storage shed located within the rear of the site for the purposes of storage for residents and owner for personal belongings, furnishings and fixtures. It is considered that the provision of additional storage is appropriate to the needs of the boarding house use;

- Many of these older period buildings, when converted from single occupancy dwellings to affordable rental accommodation, did not adequately provide for the storage needs of residents at the time. The shed structure provides additional storage to cater to the needs of the boarding house residents and owner in a secure and safe area in much the same way that a shed would for residents within single occupancy dwellings.
- (b) *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
- The density accommodated on the site is governed by the existing heritage boarding house dwelling which accommodates the significant proportion of the FSR exceedance at 183m² (0.92:1, representing an exceedance of 31.5%), Seven (7) single occupier rooms are contained within the dwelling and the provision of a detached storage structure to the rear of the site at 7.95m² will not alter this density or the intensity of use of the land. nor contribute to additional generation of vehicle and pedestrian traffic. The shed structure is of a modest size that does not facilitate its future use as an additional boarding room, notwithstanding that it is not serviced by electricity, water or sewer.
 - The minimum 20m² of private open space is maintained for use by the boarding house residents with a private open space area of 32m² provided, excluding established landscaping along the southern and eastern site boundaries, and the area adjacent to and to the rear of the shed structure which continues to be available.
- (c) *to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
- The intensity of the development containing seven (7) single occupier boarding rooms remains unchanged, Consequently, the additional 7.95m² for storage will not adversely impact the capacity of existing or planned infrastructure services.
- (d) *to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*
- The structure does not impact the heritage integrity and significance of the principle dwelling as it is detached from and located away from the heritage dwelling such that it maintains its form and expression within the site and when viewed from the public domain;
 - The detached structure is single storey only and is not visible from the Lombard Lane or any other public vantage point thereby maintaining the low scale residential character of the laneway in particular and more generally the neighbourhood and locality;
 - The structure is located adjacent to a site boundary wall of 2.55m in height and as such will not impose any significant visual or environmental impact to the adjoining site to the north; and

- Were a garage structure or similar to be constructed at the laneway would cause a significantly greater level of impact in terms of bulk, scale and presentation, being sited on the rear site boundary and directly addressing Lombard Lane. As previously proposed and as currently amended by this application, the laneway streetscape remains unchanged and consistent throughout.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objectives and purpose of the floor space ratio control is relevant to the proposed development. The proposed development is consistent with those objectives on the basis that the proposed floor space ratio still results in a development which does not change the footprint, massing, form, scale, bulk or character of the principal heritage building.

The shed structure of a scale, form and materials that reads as an ancillary and subordinate element to the heritage building being a detached single storey structure. The materials usage (weatherboard cladding) is consistent with the typology of secondary structures associated with heritage buildings and as such will continue to be compatible with the heritage building, the site context, and surrounding development, with no significant adverse impacts to adjacent properties.

3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective of the FSR development standard seeks to regulate the scale, density and type of development within a residential setting, to ensure there is sufficient infrastructure capacity available to accommodate, and that any increase in the FSR which translates to building volume (bulk, scale, height and massing) reflects the local low density character and context within which the site is situated.

It is noted too that all terraces within the terrace row have similar building envelopes, footprints and configuration and consequently share a similar FSR to that of the subject site.

The proposal seeks approval to retain and use the 'as-built' shed structure, (as proposed to be amended), for the purposes of storage associated with the boarding house use. The shed structure is ancillary to the main use and subordinate and secondary in form, scale and materials. As amended, sufficient communal open space is provided to residents well above the minimum 20m² required under clause 29(2)(d)(i) of ARHSEPP 2009 and Clause 4.4.1.4(3) of the SDCP 2012. A private open space area of 32.09m² is provided, with the shed located to the rear most section of the site to ensure that the communal open space is centralised within the site and remains connected to the main dwelling. In addition, the structure is not visible from any public vantage point, with the existing streetscape appearance and setting along Lombard Lane remaining unaltered.

Accordingly, it is considered that strict compliance would likely result in the defeat of the underlying object and purpose of the development standard which is to regulate density and intensity of use with respect to the principal dwelling and the preservation of the low density residential character of the locality.

- 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;*

The FSR development standard has not been virtually abandoned or destroyed by Council's own actions.

Notwithstanding, the significant departure from the FSR development standard is a product of the existing built form on the site. This departure would be consistent along the whole of the terrace group with which this site is a part given the consistent form, footprint, scale, massing and height across all site within the terrace group. The additional floor area of 7.95m² is considered reasonable in this context representing only a minor addition.

- 5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The proposed zoning of the land is considered to be reasonable and appropriate. The low-scale nature and setting does not change as a result of the development and as provided above is consistent with the objectives of the R1 'General Residential' zone.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The following environmental planning grounds are sufficient to justify contravention of the development standard:

- The significant proportion of the FSR exceedance is existing being the heritage 2 storey dwelling form (at 183m² representing an exceedance of 31.5%), with a generous front setback provided, with the majority of the existing gross floor area distributed vertically. The detached shed structure represents only an additional 7.95m² equating to a further 5.75% (191m²), and is able to be comfortably accommodated within the rear open space without significantly compromising the amenity and open space provisions required for boarding houses;
- The shed structure does not increase the density or intensity of use of the site;
- The shed structure does not increase pedestrian or vehicular traffic;
- The shed structure is for the use of residents and the boarding house owner for the storage of personal items and furnishings associated with the boarding house use. Storage was previously located within the partly covered area adjacent to the rear wing, which is now able to be used as an extension to the private open space with direct connection to the boarding house dwelling. The outcome also reduces unsightly clutter and occupational and health and safety hazards within the principal building footprint, a significant dis-amenity to residents of the boarding house;
- The minimum 20m² of private open space is maintained for use by the boarding house residents with a private open space area of 32m²;

- The structure does not impact the heritage integrity and significance of the principle dwelling as it is detached from and located away from the heritage dwelling such that it maintains its form and expression within the site and when viewed from the public domain;
- The detached structure is single storey only and is not readily visible from the laneway (Lombard Lane) or any other public vantage point thereby maintaining the low scale residential character of the neighbourhood;
- The structure is located adjacent to a site boundary wall of similar height and as such will not impose any significant visual or environmental impact to the adjoining site to the north; and
- Were a garage structure to be constructed at the laneway would cause a significantly greater level of impact in terms of bulk, scale and presentation, being sited on the rear site boundary. As previously proposed and as currently amended by this application, the laneway streetscape remains unchanged and consistent throughout.

Clause 4.6(4)(a)(i) – Consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

Clause 4.6(4)(a)(ii) – Consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Whilst the objectives of the development standard have already been addressed previously in this written request, for the purpose of completeness these objectives are again considered below in specific reference to Clause 4.6(4)(a)(ii).

OBJECTIVE OF THE DEVELOPMENT STANDARD (FSR)

(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

- The additional floor space results from a detached shed located within the rear of the site for the purposes of storage associated with the boarding house use. It is considered that the provision of additional storage is appropriate to the needs of the residents and owner for the secure storage of belongings, furnishing and fixtures associated with that use.
- Many of these older period buildings, when converted from single occupancy dwellings to affordable rental accommodation, did not adequately provide for the storage needs of residents at the time. The shed structure provides additional storage to cater to the needs of the boarding house residents and owner in a secure and safe area in much the same way that a shed would for residents within single occupancy dwellings.

(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,

- The density accommodated on the site is governed by the existing heritage boarding house dwelling which accommodates the significant proportion of the FSR exceedance at 183m² (0.92:1, representing an exceedance of 31.5%), Seven (7) single occupier rooms are contained within the dwelling and the provision of a detached storage structure to the rear of the site at 7.95m² will not alter this density or the intensity of use of the land. nor contribute to additional generation of vehicle and pedestrian traffic. The shed structure is of a modest size that does not facilitate its future use as an additional boarding room, notwithstanding that it is not serviced by electricity, water or sewer.
- The minimum 20m² of private open space is maintained for use by the boarding house residents with a private open space area of 32m² provided, excluding established landscaping along the southern and eastern site boundaries, and the area adjacent to and to the rear of the shed structure which continues to be available.

(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

- The intensity of the development containing seven (7) single occupier boarding rooms remains unchanged, Consequently, the additional 7.95m² for storage will not adversely impact the capacity of existing or planned infrastructure services.

(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

- The structure does not impact the heritage integrity and significance of the principle dwelling as it is detached from and located away from the heritage dwelling such that it maintains its form and expression within the site and when viewed from the public domain;

- The detached structure is single storey only and is not visible (as amended) from the laneway or any other public vantage point thereby maintaining the low scale residential character of the neighbourhood;
- The structure is located adjacent to a site boundary wall of 2.55m in height and as such will not impose any significant visual or environmental impact to the adjoining site to the north; and
- It is noted that a garage or similar structure constructed at the laneway would cause a significantly greater level of impact in terms of bulk, scale and presentation, being sited on the rear site boundary with direct address to Lombard Lane. As previously proposed and as currently amended by this application, the laneway streetscape remains unchanged and consistent throughout.

OBJECTIVE OF THE ZONE

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the R2 Low Density Residential zone. The objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing land use pattern of predominantly residential uses.*

The proposed development is consistent with the zone objectives as follows:

- The current use is an approved boarding house which is permitted with consent within the R1 'General Residential' zone;
- The approved use provides for the housing needs of the community by offering low cost accommodation within an area that is becoming increasingly gentrified and unaffordable;
- The approved use is compatible with the surrounding land uses;
- Many of these older period buildings, when converted from single occupancy dwellings to affordable rental accommodation, did not adequately provide for the storage needs of residents at the time. The shed structure provides additional storage to cater to the needs of the boarding house residents and owner in a secure and safe area in much the same way that a shed would for residents within single occupancy dwellings;
- The existing land use pattern does not change as a result of the storage shed, with the storage shed ancillary to the main use.

For the reasons given the proposal is considered to be consistent with the objectives of the R1 'General Residential' zone.

Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

- (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.*

The increase of the floor area by 7.95m² as a result of the introduction of an ancillary storage shed is considered minor when viewed against the principal dwelling where the substantive scale, bulk and floor space is contained. The single storey ancillary shed structure is modest in scale and as a result does not impact the form or expression of the heritage item nor the character and setting of the locality. In addition, the shed structure has been cladded in weatherboard to be compatible with the heritage item such that it is not 'out of place' within the site and is able to be read as a later addition subservient and secondary to the principal form.

The additional floor space does not seek increased density but has been constructed to support the storage needs generated by the boarding house use, of residents and owner/s alike. The communal open space is centralized and connected to the dwelling providing an area of 32m², excluding established landscaping and the area adjacent to and to the rear of the shed which continues to be available.

The shed structure also makes available partly covered open space with direct connection to the boarding house dwelling, formerly used for the storage of goods and materials, reducing unsightly clutter and hazards in close proximity to the internal areas of the boarding house. In this regard the change makes a positive contribution to the amenity and setting within which the residents reside.

Having regard to the matters above, the additional floor area of on 7.95m² is not considered to be an overdevelopment of the site or cause any increase in residential density, but one that improves the amenity for residents, and it is therefore not anticipated that any approval will cause a poor precedent for the development of rear ancillary structures of the type proposed, which is commonplace within rear yards.

Accordingly, it is considered that the consent authority can be satisfied that the development meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the maximum permitted floor space ratio development standard will not overly burden the site or its current residential setting, nor impact the heritage significance of the principal dwelling, providing positive benefits to occupants.

The development meets the intent of the clause 4.6 objectives and the objectives for the FSR and R1 'General Residential' zone and will achieve a better outcome in this instance in accordance with objective 1(b), with a proposal that will have acceptable and reasonable environmental impacts on the site, and no impact to the setting, adjoining development, or the existing and desired future character locality, providing positive benefits to the boarding house occupants.

Conclusion

The development exceeds the maximum FSR for the site and therefore requires a Clause 4.6 exception to the development standard. The proposed variation to the floor space ratio development standard contained within Clause 4.4 of the *Sydney Local Environmental Plan 2012*, is found to be reasonable in the circumstance of the case.

The increase to the gross floor area / floor space ratio represents only a minor increase and does not increase the density currently approved for the site. The shed structure is an ancillary development that preserves both the significance of the heritage item and the residential setting within which the site is located.

Considering the particular circumstances of this development, strict compliance with the numerical standard is both unreasonable and unnecessary with sufficient environmental planning grounds to justify the variation. In this regard, it is reasonable and appropriate to vary the floor space ratio development standard to the extent proposed.



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