

**DA NO:** DA-2023/268

**ADDRESS:** LOT 39, 135-145 SAILORS BAY ROAD, NORTHBRIDGE NSW 2063

**PROPOSAL:** CHANGE OF USE OF EXISTING COMMUNITY FACILITY TO A COMMERCIAL PREMISES.

**RECOMMENDATION:** APPROVAL

**ATTACHMENTS:**

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SUBMISSIONS TABLE
4. APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR
5. OFFICER'S CLAUSE 4.6 ASSESSMENT – FSR
6. SECTION 4.15 (79C) ASSESSMENT
7. SCHEDULE OF CONDITIONS
8. NOTIFICATION MAP

**RESPONSIBLE OFFICER:** RITU SHANKAR - TEAM LEADER

**AUTHOR:** ANTHONY BLUE - CONTRACTOR: SENIOR DEVELOPMENT ASSESSMENT PLANNER

**REPORT DATE:** 7 MAY 2024

**MEETING DATE FOR ED** ELECTRONIC DETERMINATION

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## **1. Purpose of Report**

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2023/268 for change of use of existing community facility to a commercial premises at Lot 39, 135-145 Sailors Bay Road, Northbridge.

The application is required to be referred to the WLPP for determination as it is categorised as giving rise to a conflict of interest because the applicant and land owner is the Council.

## **2. Officer's Recommendation**

**THAT the Willoughby Local Planning Panel:**

**2.1 Support the variation to the development standard in *Willoughby Local Environmental Plan 2012* Clause 4.4 Floor Space Ratio under clause 4.6 (as assessed in Attachment 5) for the following reasons:**

- 2.1.1 The applicant's written request has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard, and**
- 2.1.2 The proposal is consistent with the objectives of the development standard for FSR and the objectives of the zone, and therefore it is reasonable to conclude it is in the public interest to allow the development.**

**2.2 Approve Development Application DA-2023/268 for change of use of existing community facility to a commercial premises at Lot 39, 135-145 Sailors Bay Road, Northbridge NSW 2063, subject to conditions contained in Attachment 7, for the following reasons:**

**2.2.1 The proposed development does not conflict with the desired outcomes and objectives of the development standards contained in the *Willoughby Local Environmental Plan 2012 (WLEP)*.**

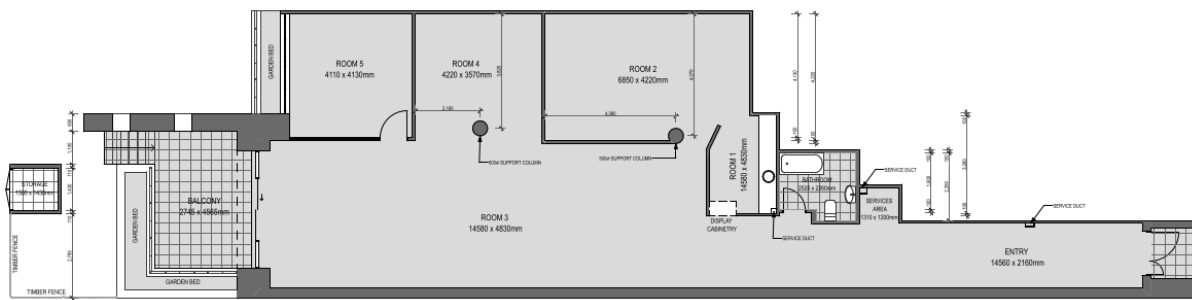
**2.2.2 The proposal is consistent with the objectives of the development controls contained in *WDCP 2023*.**

**2.2.3 The development will allow an unused community facility property provide funds to meet the current need for community services in the local area.**

### **3. Background**

A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

Figure 1 provides a floor plan of the subject development.



**Figure 1 Floor Plan of Unit 39**

The application was lodged on 29 September 2023.

The application was notified from 31 October to 28 November 2023.

On 11 December 2023, a letter was sent to the applicant requesting additional information:

1. The SEE will need to be updated to reflect:
  - a. Making of *WLEP 2012* (Amendment No 34) - delete reference to *Draft WLEP 2022*.
  - b. Adoption of *WDCP 2023* and repeal of *WDCP 2006*. Assessment under the new *DCP* is required.
2. The SEE will need to be amended in respect to the impact of the proposal on the Floor Space Ratio, noting that clause 4.4(2A)(b)(i) of *WLEP 2012* excludes the part of the floor area of a building that is to be used for community facilities. The proposal intends to use previously excluded floor area for commercial premises which is now required to be included in the calculation of floor space ratio.
3. If the FSR exceeds the maximum permissible, a clause 4.6 variation request will need to be submitted.

On 31 January 2024, the applicant submitted a revised SEE and a clause 4.6 written request in respect to the exceedance of the maximum FSR for the site.

On 11 March 2024, the applicant was advised that the clause 4.6 written request refers to an incorrect variation calculation.

On 18 April 2024, the applicant was provided with historical information regarding the calculation of gross floor area for the original development of the site, and requested to review the calculation of the proposed floor space ratio.

On 2 May 2024, the applicant submitted a revised SEE and revised clause 4.6 written request.

### History of the Site

Construction of the building was approved under consent to Development Application 1994/320 on 23 August 1994.

At the time, the site was zoned General Business 3(a) under *Willoughby LEP* No.25, which permitted commercial and retail premises and residential flat buildings, subject to a maximum FSR of 1:1.

On 17 November 1995, *WLEP 1995* came into effect and maintained the General Business 3(a) Zone. Under *WLEP 1995*, Zone 3(a) allowed residential flat buildings attached to or used in conjunction with other permitted uses in the zone. Clause 36(1) set a maximum FSR of 1:1 for the non-residential component of the development. Clause 36(3) allowed the residential component to be unrestricted in respect to floor space ratio.

On 21 December 2012, *WLEP 2012* commenced. The site was zoned B2 Local Centre and a maximum FSR of 2.6:1 applied to the site. *WLEP 2012* introduced clause 4.4(2A) which excluded any part of the floor area that is to be used for community facilities to be excluded from the calculation of gross floor area when calculating the FSR.

### History of the Development

The original development application for the erection of the building on the site proposed the erection of a five storey commercial/residential development above basement parking with a FSR of 2.6:1<sup>#1</sup>, which significantly exceeded the permissible FSR under *WLEP* No. 25. The application was supported by a written objection under *SEPP* No.1, which functioned in the same manner as the current provisions of clause 4.6, allowing variations to development standards to be approved. The planner's assessment report supported the request to vary the maximum FSR.

*(<sup>#1</sup>Note: the planners report approved a GFA of 5,752m<sup>2</sup>, which equates to a FSR of 2.6:1. The calculation of GFA included the floor area of the proposed community facility as there was no provision in the planning instrument specifying that this floor area be excluded from the calculation).*

Consent was granted to the development on 23 August 1994. At that time, Council sought developer contributions for the provision of community facilities. In submitting the application, the developer offered to provide community facility floor space as part of the development in lieu of payment of contributions.

Consequently, condition 2 of the consent required:

The provision of community facility space as offered to Council shall be provided at a nominal rent with a 99 year lease to the satisfaction of Council.

The building was erected without the required lease being prepared, but prior to occupation, Council commenced action to enforce the consent condition. On 7 June 1996, the

applicant's solicitors provided a draft lease agreement to Council. By letter dated 9 September 1996, the applicant's solicitor advised it intended to transfer ownership of community facility to Council (rather than a 99-year lease) together with a by law to be adopted by the Body Corporate for Council to use the strata unit as a community facility.

On 24 April 1997, the Body Corporate resolved to pass a by law in respect to the use of Lot 39 by Council as a community facility. The by-law states that Council shall use Lot 39 as a community facility and that Council will ensure that its operation complies with certain requirements regarding noise, hours of operation, limit on dispensing of drugs, and other operational matters. The by law also required Council to notify the Body Corporate if it wished to change the type of use of community facility.

On 24 August 1998, following negotiations in the Land and Environment Court, Council resolved to approve a Deed of Agreement and Discontinuance of the Land and Environment Court proceedings. The Deed of Agreement proposed the transfer of ownership of Strata Lot 39 to Council rather than the entering into of a 99 year lease. As part of this agreement, Council agreed that the developer would have the proxy vote for the Council in the body corporate for a period of 10 years.

On 7 December 1998, based on legal advice at the time, Council resolved to classify the strata unit lot as operational land, under the Local Government Act 1993, in preparation of the transfer of ownership to Council.

On 20 January 1999, following signing of the agreement by the developer, consent orders were issued by the Land and Environment Court with the settlement being based on the transfer of ownership of the strata unit 39 to Council. On transfer, the land was classified as operational land.

During 1999, Council sought expressions of interest from community groups interested in occupying the newly acquired community facility. "Centacare", a community group that provided Family Support Services, operated at that time by Catholic Family Services, commenced action to occupy the premises. In December 1999, staff from Centacare arrived at the premises and were unable to enter due to a metal plate being screwed to the bottom of the door. Despite investigation and action by Council to secure safe access to its own premises, Centacare advised in August 2000 that they had decided it was untenable to provide Family Support Services from the premises.

In December 2000, Council advertised for expressions of interest from community groups to use the property. On 23 April 2001, Council resolved to offer the premises to Sunnyfield Association and Chatswood Supported Living. However, this proposal was not approved by the Body Corporate.

The current application indicates that the property was eventually leased to an Aboriginal Heritage Officer in or about 2011, and was vacated in 2015. The property has remained empty since that time.

#### Existing Community Facilities in Northbridge

The applicant has advised that Council purchased a former Presbyterian Church building at 258 Sailors Bay Road, Northbridge in April 2007. The building was then repurposed and opened as a public library and art space in 2010.

In 2020, Council undertook a major renovation of the former Northbridge Bowls Club, which closed in 2015. The former bowling greens have been converted to a Community Farm and Garden, the Warners Park Centre is expected to open soon for community use.

**Opportunities Associated with Lease Income or Sale Proceeds of Lot 39**

The applicant has indicated that any income or sale proceeds would be made available to Council to provide community benefits through community programs or new community facilities to serve a broader area of the community.

#### **4. Discussion**

The controls and development statistics that apply to the subject land are provided in **Attachment 2**.

A table of the issues raised in the submissions objecting to the proposal and the assessing officer's response is contained in **Attachment 3**.

A detailed assessment of the Clause 4.6 is provided in **Attachment 5. (check number)**

A detailed assessment of the proposal for approval is provided in **Attachment 6**.

The **plans** used for this assessment can be found in a file named **WLPP Plans** under the DA tracking functionality for this application on Council's website:

<https://eplanning.willoughby.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=533302>

#### **5. Conclusion**

The Development Application DA-2023/268 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in Attachment 7.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

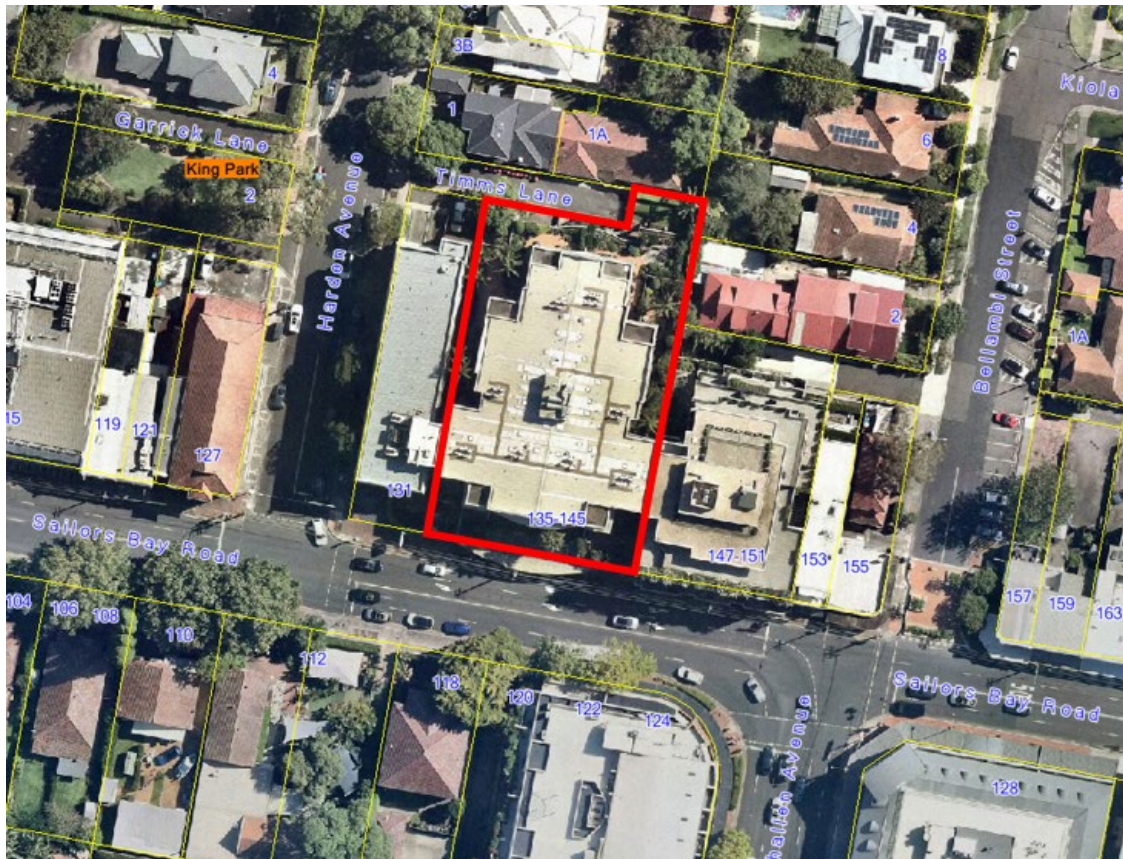


Figure 2 Site Location (Aerial Imagery - Nearmap February 2024)

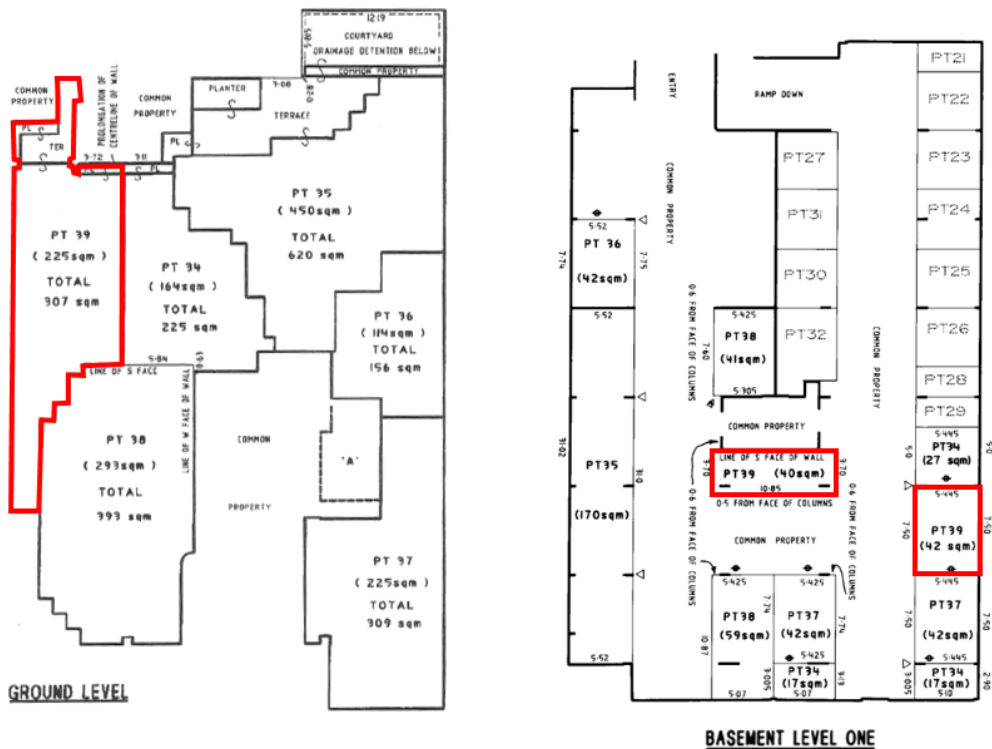


Figure 3 Location of Lot 39

The site is described as Lot 39, SP54400, and occupies part of the ground floor of 35-45 Sailors Bay Road, Northbridge, and includes 5 dedicated parking spaces within Basement Level 1.

Lot 39 has a gross floor area of 184<sup>2</sup>. The layout provides an entry corridor, an open central room, and 3 separate office spaces located along the eastern wall. There is a balcony facing Timms Lane, and stairs providing pedestrian entrance from the rear laneway.

The site contains a five-storey mixed use development containing commercial premises at the ground floor level fronting Sailors Bay Road, residential flat building development at the upper levels, and rear laneway access to the basement car park from Timms Lane.

The site is on the northern side of Sailors Bay Road, approximately 25m east of the intersection of Sailors Bay Road and Harden Avenue, and about 130m east of the Northbridge Plaza shopping centre.

**ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS**

<b>Willoughby Local Environmental Plan 2012 Zoning:</b>	Zone E1 Local Centre
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	No
Aboriginal Heritage	No
Heritage Item	No
Vicinity of Heritage Item	No
Natural Heritage Register	No
Bushfire Prone Area	No
Foreshore Protection Area	No
Flood related planning control	No
Adjacent to classified road	Yes
Road/lane widening	No
Acid Sulphate Soil Category	5
Development near Lane Cove Tunnel	No
Adjacent / above Metro	No
BASIX SEPP	No
Housing SEPP 2021	No
SEPP 65	No
SEPP (Transport and Infrastructure) 2021	No
SEPP (Resilience and Hazards) 2021	No applicable provisions to this application
SEPP (Biodiversity and Conservation) 2021	Chapter 6 (former <i>Sydney Regional Environmental Plan</i> (Sydney Harbour Catchment)). No significant impacts.
Other relevant SEPPs	SEPP Exempt and Complying Development Codes) 2008: Subdivision 10A
Relevant policies and resolutions	WDGP 2023

**SEPP (Exempt and Complying Development Codes) 2008 (the Code SEPP)**

The application seeks approval for commercial premises. “Commercial premises” is a “parent” term that includes multiple “child definitions” of land uses.

The Code SEPP provides guidance on equating the impacts of various land uses through the specification of exempt development where a property has approval for a particular use and is to be changed to another particular use. See *Subdivision 10A Change of use of premises*.

Section 2.20A includes these uses in the same category:

- business premises,
- office premises, and
- shop.

Note that shop does not include food and drink premises. Section 2.20B excludes these uses from the exemption:

- funeral chapels,
- funeral homes,
- beauty salons,
- hair dressing salons,



- uses involving skin penetration procedures,
- restricted premises
- goods repair and reuse premises,
- retail of firearms.

This is relevant to the discussion under Permissible Uses, below.

### ***Willoughby LEP 2012***

#### Suspension of Covenants

*Clause 1.9A Suspension of covenants, agreements and instruments* provides the following:

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

To the extent that the adopted by-law for the use of Lot 39 may operate to restrict the use of the property, it is considered that clause 1.9A suspends the operation of the by law. If consent is granted, then the use is able to carried on in accordance with the consent.

#### Permissible Uses

The application seeks approval for commercial premises. Zone E1 permits commercial premises with consent.

**commercial premises** means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

**business premises** means a building or place at or on which—

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis, and includes funeral homes, goods repair and reuse premises and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

**office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) food and drink premises,
- (b) garden centres,
- (c) hardware and building supplies,
- (d) kiosks,
- (e) landscaping material supplies,

- (f) markets,
- (g) plant nurseries,
- (h) roadside stalls,
- (i) rural supplies,
- (j) shops,
- (k) specialised retail premises,
- (l) timber yards,
- (m) vehicle sales or hire premises,

but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.

Having regard to the character of the building and the strata unit, and the available services for the use of Lot 39, it is considered that any consent be limited to the following types of commercial premises:

- business premises other than funeral chapels, funeral homes, beauty salons, hair dressing salons, uses involving skin penetration procedures, restricted premises or goods repair and reuse premises,
- office premises and
- shops excluding retail of firearms.

Any other use shall require submission of another development application to address the specific requirements of the particular use.

Clause 4.4 Floor Space Ratio

Clause 4.4(2) provides:

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.

The Floor Space Ratio Map shows a maximum floor space ratio of 2.6:1 for the site.

Clause (2A) provides that despite subclause (2)—

- (b) part of the floor area of a building is taken not to be part of the gross floor area of the building for determining the maximum floor space ratio of the building if it—
  - (i) is to be used for community facilities.

Consequently, a change of use of Lot 39 from community facility to commercial premises will result in a notional increase in the gross floor area.

<b>WLEP2012 Control</b>		<b>Proposed</b>	<b>Standard</b>	<b>Compliance</b>
		Site Area = 2,190m <sup>2</sup>		
		Existing GFA = 5,694m <sup>2</sup> Existing FSR = 2.54:1		
<b>CI 4.4</b>	<b>GFA FSR</b>	New GFA = 184m <sup>2</sup> New Total = 5,752m <sup>2</sup> 2.62:1	5,694m <sup>2</sup> 2.6:1	No – see Attachment 5

<b>WDCP 2023 Control</b>	<b>Proposed</b>	<b>Standard</b>	<b>Compliance</b>
<b>Part D Commercial Development</b>			
<b>7.7 Loading/unloading facilities</b>			
<b>4.7.2 Controls</b>	Loading and unloading to and from the subject tenancy is capable of being accommodated from Timms Lane at the rear of the site in accordance with Part 4.7.2(a), with direct access to the	Each commercial premises must have a separate loading facility	Yes

<b>WDCP 2023 Control</b>	<b>Proposed</b>	<b>Standard</b>	<b>Compliance</b>
<b>Part D Commercial Development</b>			
<b>7.7 Loading/unloading facilities</b>			
	premises provided via the rear lane. Larger deliveries requiring a dolly are able to be wheeled along Harden Avenue and through the main entry – Sailors Bay Road frontage of the site.	provided off a secondary road or laneway	
<b>Part F Transport and Parking Management</b>			
<b>Table 1 Car parking rates</b>			
office and business premises	Based on 184m <sup>2</sup> , 3 spaces required, 5 spaces available.	1 space/60m <sup>2</sup> , round down	Yes
retail premises	Based on 184m <sup>2</sup> , 5 spaces required, 5 spaces available.	1 space/33m <sup>2</sup> , round down	Yes

**Developer’s Contribution Plans:**

None applicable

**Referrals**

Building services	Acceptable subject to conditions
Environmental Health	It is noted that the tenancy appears not to provide a connection to mechanical ventilation ducting with a vertical external exhaust connection, which would be required for a food business or beauty/nails salon. Supports recommendation for limitation on uses.

**ATTACHMENT 3: SUBMISSIONS TABLE**

Council was in receipt of five individual submissions from the following objectors:

1.	McLachlan Thorpe Partners for Castle Constructions Pty Ltd
2.	Victor Lahoud for Castle Constructions Pty Ltd
3.	Urban Perspectives for Castle Constructions Pty Ltd
4.	Kym Scollay, 5 Harden Ave Northbridge
5.	Northbridge Progress Association

The below table provides an assessment of the issues raised by the objectors.

<b>Issues Raised</b>	<b>Officer's Response</b>
<i>Willoughby LEP 2012</i> Clause 1.9A does not suspend the by-law	<p>The submission provides two arguments for reaching this conclusion.</p> <p>The first is that the that the wording of clause 1.9A does not include reference to a by-law, which is listed in the regulatory instruments referenced in section 3.16 of the Environmental Planning and Assessment Act 1979 (the Act), and that this non-inclusion was intentional.</p> <p><u>Comment:</u> The wording of clause 1.9A is the standard wording in local environmental plans. The intent is to suspend all instruments in accordance with power conferred under section 3.16 of the Act.</p> <p>The second argument is on the basis that clause 1.9A(2)(a) states that the suspension does not apply to a covenant imposed by the Council or that the Council required to be imposed. The claim is that Council required the by-law to be imposed in order to satisfy the conditions of development consent requiring a 99-year lease to Council of the community facility.</p> <p><u>Comment:</u> Council did not require the by-law to be imposed. The by-law was adopted at the initiation of the developer (Castle Constructions Pty Ltd). There is no mention in the consent condition that requires or implies any such restriction being created in respect to Lot 39.</p> <p><u>General Comment:</u> Consideration of the by law is not a relevant consideration under the matters for consideration listed in section 4.15 of the Act. The issue of whether or not clause 1.9A suspends the operation of the by law is not a matter to be resolved before the grant of consent, but at the time a person intends to act on the consent.</p> <p>However, it is considered that clause 1.9A does suspend any restriction that arises under the by-law.</p>
No evidence of classification of the land as operational land.	<p><u>Comment</u> Review of Council records indicate that Council passed a resolution on 7 December 1998 to classify the land (strata unit) as operational land, under the Local Government Act. Following the issue of consent orders by the Land and Environment Court on 20 January 1999, the strata unit was transferred to Council ownership.</p> <p>In any case, the classification of land under the Local Government Act is not a relevant consideration under the matters for consideration listed in section 4.15 of the Act. If the land was not classified as operational land, consent is able to be granted. However, the use can only be carried out if it is authorised by the Local Government Act in respect to the use of community</p>

	<p>land, or be reclassified as operational land.</p> <p>However, it appears there is adequate evidence that the strata lot was classified as operational land prior to it being passed into Council ownership.</p>
<p>Clause 4.6 written request to vary the FSR is defective and cannot be supported</p>	<p>The submission argues that the written request to vary the FSR for the site was framed in accordance with the changed provisions of clause 4.6 implemented under the Standard Instrument amending order that commenced on 1 November 2023. The application was lodged prior to 1 November 2023, so must be assessed in accordance with the savings provisions (that is, applications lodged before 1 November 2023 are to be assessed as if the amending order had not been made).</p> <p><u>Comment:</u> Review of the written request appears to be entirely consistent with the format of written requests made prior to the amendment of clause 4.6 on 1 November 2023.</p>
<p>Clause 4.6 request incorrectly calculates the FSR variation proposed.</p>	<p>The original clause 4.6 written request referenced a variation of 18.9% to the maximum FSR of 2.6:1, while variation is in the order of 5%.</p> <p><u>Comment:</u> The calculation of FSR has been corrected based on the original development approval. The applicant submitted a revised clause 4.6 written request that identifies the variation to be in the order of 1%, which is considered to be correct.</p>
<p>The proposed change of use is contrary to the objectives of the FSR control and the zone objectives</p>	<p><u>Comment:</u> See assessment of the written request in Attachment 5.</p>
<p>Lot 39 was transferred to Council for the provision of a community facility in lieu of the payment of developer contributions and should continue to be provided for the local community</p>	<p>The submission (which was made by the original developer) argues that Lot 39 was given to Council for use as a community facility, and that use should continue for the benefit of the local community.</p> <p><u>Comment:</u> The history of the circumstances of how Lot 39 came to be in Council's ownership are noted. The provision of community facilities through the collection of developer contributions has been an evolving practice over the past 30 years. At the time consent was granted, Council was of the view that Lot 39 would be a good property asset for the provision of community facilities, rather than the payment of a monetary contribution. Over time, and as the demographic profile of the local community matures and then is renewed, the type and location of community facilities also changes. To meet its ongoing responsibilities and commitments to the provision of community facilities, Council reviews its current assets and building infrastructure and endeavours to make the best use of those assets. In this case, Council has determined that the potential income from a commercial lease, or capital value, of this property would be better utilised if it is able to be obtained to provide other suitable facilities in the local area.</p>
<p>Inconsistent with Consent Conditions 2, 3, 4, 7 and 9 to DA 94/320 and application must be made to modify that consent.</p>	<p><u>Comment:</u> Condition 2 required the entering into a 99 year lease to the satisfaction of Council, and an appropriate legal agreement with Council prior to the commencement of work. LEC Consent Orders were agreed in the form of transfer of ownership of Lot 39 to Council in satisfaction of this condition. There is no need to amend the condition.</p> <p>Condition 3 required the community facility to be provided with basic fit out at no cost to Council. This condition was satisfied at the time of occupation. There is no need to amend the condition.</p> <p>Condition 4 provided that the legal agreement referred to in condition (2) is to make provision for the use of the community facility as an early Childhood</p>

	<p>and Family Health Centre. As noted, condition 2 was satisfied through the LEC Consent Orders.</p> <p>Condition 7 required a separate application to be submitted for occupation of the proposed commercial and retail use areas. This condition did not relate to Lot 39.</p> <p>Condition 9 required 5 of the car parking spaces in the basement to be allocated to the community facility. These spaces form part of Lot 39. The condition has been satisfied. There is no need to amend the condition.</p>
<p>Opposed to land being changed from community facility to commercial purpose if it was dedicated to Council for community purpose.</p>	<p><u>Comment:</u> Council is required to consider the most effective way to utilise its assets and infrastructure for the optimum provision of community facilities. In this case, it is proposed to obtain an income stream from a commercial lease, or liquidate the capital value of this property and provide more appropriate facilities to meet the current needs of the community.</p>
<p>Will money used and received for this asset will be allocated to benefit the Northbridge community</p>	<p><u>Comment:</u> Council is required to consider the most effective way to utilise its assets and infrastructure for the optimum provision of community facilities. The money may be utilised in the Northbridge community, or more generally across the Willoughby City area.</p>

**ATTACHMENT 4: APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR**

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1 May 2024

**Clause 4.6 Variation to Development Standard**

**Property Description:** Lot 39 – 135 Sailors Bay Road, Northbridge  
**Development:** Change of Use – Commercial premises  
**Development Standard:** Clause 4.4 Floor Space Ratio – *Willoughby Local Environmental Plan 2012*

**Introduction**

This is a clause 4.6 written request to support the development proposal for a change of use of the existing *community facility* to a *commercial premises* within Lot 39, SP54400 at the ground floor level of the existing mixed-use building on the subject site. The current use of the premises is as a *community facility* in accordance with Condition No. 2 of development consent DA94/320 issued on 23 August 1994 for:

*the erection of [a] five storey commercial/residential development above basement parking.*

The proposal does not include any building works.

This clause 4.6 seeks a variation to the floor space ratio development standard contained in clause 4.4(2) – Floor Space Ratio of the *Willoughby Local Environmental Plan 2012*.

The subject site is identified on the Floor Space Ratio (FSR) map within the *LEP* as being subject to a maximum FSR of 2.6:1. In accordance with the originally approved development application for the existing mixed-use building on the site, the existing building has a gross floor area of 5,567.8m<sup>2</sup>, and based on the site area of 2,190m<sup>2</sup> has an existing FSR of 2.54:1.

Clause 4.4(2A)(b) of the LEP states:

(2A) *Despite subclause (2)—*

...

(b) *part of the floor area of a building is taken not to be part of the gross floor area of the building for determining the maximum floor space ratio of the building if it—*

- (i) *is to be used for community facilities, or*
- (ii) *is a heritage item.*
- (iii) *(Repealed)*

Pursuant to Clause 4.4(2A)(b)(i) above, as the proposal seeks a change of use from a *community facility* to a *commercial premises*, the proposal results in an increase in gross floor area of 184.2m<sup>2</sup> on the site as the commercial use now forms part of the building's gross floor area. The proposal therefore results in a total floor area of 5,752m<sup>2</sup> presenting an FSR of 2.62:1 which varies the maximum permissible FSR on the site.

The proposed variation is a result of the conversion of a *community facility* land use which is expressly excluded from the calculation of gross floor area by Clause 4.4(2A)(b)(i) of the LEP. The development otherwise does not present any physical increase to the floor area or density of the existing building on the site as no building works are proposed as part of the application.

The resultant GFA of 5,752m<sup>2</sup> is a variation of 58m<sup>2</sup> to the development standard, being a variation of 1.01% from the maximum permissible floor space ratio. It is noted that the existing building's floor area is not increased by the proposal but rather the proposed change of use technically results in additional gross floor area on the site by converting an existing *community facilities* premises with no building works proposed.

The request to contravene the Floor Space Ratio development standard has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b))



**Matters required to be demonstrated under clause 4.6(3) of the LEP**

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a), the variation to the floor space ratio is acceptable in the circumstances of this case and compliance with the development standard is considered unnecessary because the proposed development is consistent with the objectives of the development standard, notwithstanding non-compliance with the standard.

• **Objective of the floor space ratio development standard**

The objectives of the development standard at Clause 4.3 of the *Willoughby LEP 2012* are:

*(a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*

*(b) to limit traffic generation as a result of that development,*

*(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

*(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*

*(e) to permit higher density development at transport nodal points,*

*(f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*

*(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

*(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*

*(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*

*(j) to encourage the consolidation of certain land for redevelopment,*

*(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

The proposed development meets the objectives of the standard based on the following:

- **Objective (a):** The proposed variation to the maximum permissible FSR is a result of the proposed change of use within the existing building on the site, noting no physical building works are proposed. As such the variation does not seek to increase the existing development density on the site, and does not exceed the environmental capacity of the land as it does not physically result in any additional floor area on the site. The development intensity resulting from the use of the subject tenancy as a small-scale commercial tenancy can be suitably accommodated on the site noting the premises has appropriate pedestrian and vehicular access, and provides an excess of required parking spaces confirming the commercial use can be accommodated within the existing building circumstances.
- **Objective (b):** The proposed use of the tenancy for commercial premises can be comfortably accommodated within the subject building noting a total of 5 x car spaces are allocated to the subject tenancy within the basement carpark of the existing building. Adequate parking is provided to the tenancy to accommodate staff and visitor parking, and the scale of the premises is unlikely to result in any significant traffic generation.
- **Objective (c):** The application does not propose any physical works and as such does not present any external impacts with respect to views, loss of privacy, overshadowing or visual intrusion.
- **Objective (d):** The application does not propose any physical works and as such does not present any external impacts with respect to bulk and scale.
- **Objective (e):** The subject site is located within the E1 Local Centre along Sailors Bay Road, Northbridge, which is identified within Chapter F of the *Willoughby DCP 2023* as being within a major public transport route. As such, the proposed variation to the FSR standard resulting from conversion of *community facility* use to a *commercial use* is appropriate for the site with respect to intensity of development near transport nodal points.
- **Objective (f):** N/A – the site is not located within the Chatswood City Centre.
- **Objective (g):** N/A – the site is not located within the Chatswood City Centre.
- **Objective (h):** N/A – the site is not located within the Chatswood City Centre.
- **Objective (i):** N/A – the proposal does not alter the existing building scale and density on the site.
- **Objective (j):** N/A – the proposal does not apply for redevelopment of the land.
- **Objective (k):** The proposal seeks to revitalise the existing tenancy on the subject site – Lot 39 noting the premises is an unused tenancy that has not been recently operated by Council for *community facility* purposes in accordance with the original approval on the site. The proposed change of use to a *commercial premises* will

contribute to the economic vitality of the existing building on the site and allow for the activation of an unutilised tenancy in a manner that is suitable for the subject site.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the non-compliance.

Furthermore, it is unnecessary to require compliance with the FSR development standard due to the following reasons:

- The development proposal is in the public interest because it is consistent with the objectives of the applicable floor space ratio standard and is consistent with the objectives of the E1 Local Centre zone as addressed within the below assessment:

Objective	Consistency
<ul style="list-style-type: none"> <li>• <i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</i></li> </ul>	<p>The proposed <i>commercial premises</i> will contribute to a range of uses within the Northbridge Local Centre and is an appropriate use consistent with envisioned forms of development within the zone. The proposed use will serve local residents and visitors of the Northbridge Local Centre.</p>
<ul style="list-style-type: none"> <li>• <i>To encourage investment in local commercial development that generates employment opportunities and economic growth.</i></li> </ul>	<p>The change of use of the premises will improve the economic vitality of the local centre and existing building, contributing to an active street frontage – <i>commercial use</i> along Sailors Bay Road. The change of use will generate employment opportunities by activating the subject tenancy which has not been utilized as a <i>community facility</i> as originally approved for 6 years.</p>
<ul style="list-style-type: none"> <li>• <i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.</i></li> </ul>	<p>The proposal does not prohibit or impact upon residential development within the existing building or surrounding locality.</p>
<ul style="list-style-type: none"> <li>• <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i></li> </ul>	<p>The proposal seeks to provide a <i>commercial premises</i> – business use at the ground floor of the existing mixed-use building on the site, with a frontage and direct access to Sailors Bay Road serving to contribute to the activation of the street.</p>



<ul style="list-style-type: none"> <li>• <i>To provide for services and employment within walking distance of residences.</i></li> </ul>	<p>The proposed <i>commercial premises</i> is located at the ground floor of a mixed-use building with residential dwellings above, and will contribute to the range of commercial services within the local centre that is within walking distance of residences within the subject building and surrounding locality.</p>
<ul style="list-style-type: none"> <li>• <i>To generally conserve and enhance the unique sense of place of local centres by ensuring new development—</i>  <i>(a) displays architectural and urban design quality, and</i>  <i>(b) integrates with the desired character and cultural heritage of local centres.</i></li> </ul>	<p>The proposal does not include any physical works and as such does not alter the existing built form on the site. The proposed use of the subject tenancy for a commercial premises at ground level is consistent with the desired character for development in the Northbridge local centre.</p>

- The public benefit of maintaining the development standard is not considered significant because the proposal is consistent with the objectives of the development standard contained in the *LEP* notwithstanding the numerical variation.
- The proposal does not propose any physical works, with the variation to the FSR standard resulting from the inclusion of the subject tenancy’s floor area as part of the building’s GFA through the conversion of floor area dedicated to a *community facility* to a *commercial premises*. As such it is considered that the public benefit of maintaining the standard is minimal as the variation is not the result of any physical works, changes to the existing built form on the site, or existing bulk and scale and as such does not present any external environmental impacts upon the surrounding locality.
- The variation to floor space ratio standard is not the result of any physical building works and as such does not present an intensification of development density on the subject site, and as the proposed uses can be comfortably accommodated within the site with respect to access, parking, and traffic generation will not exceed the environmental capacity of the site.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the proposal meets the third test as the objectives of the floor space ratio standard would be thwarted if compliance was required.

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the floor space ratio development standard because:

- The proposed variation to the FSR standard allows for the reuse and vitalization of an existing tenancy which has not been utilised for its intended purpose – *community facility* for 6 years. The proposal allows for the activation of the unused tenancy by utilising the existing built form and building fabric to accommodate a *commercial use* which is a suitable form of development for the E1 Local Centre zone. The variation ensures that the continued use of the tenancy is financially viable and that the ground floor of the existing building provides an active street frontage to Sailors Bay Road.
- The variation to the maximum permissible FSR is the result of the conversion of floor area within an existing building to a *commercial* land use with no change to the existing built form, building appearance, or physical density of the existing building and as such does not result in any material environmental impacts upon adjoining properties or the surrounding locality. The use can be comfortably accommodated within the site noting adequate parking, pedestrian and vehicular access is provided to the tenancy to service the *commercial premises* confirming that the proposal does not exceed the planned development density for the land. Dickson C confirmed in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes 'good design and amenity of the built environment' being an objective of the EPA Act.
- The community facility at Lot 39/135 Sailors Bay Road, Northbridge is surplus to community need. Since the Council has owned the community facility (Lot 39) in 1999 the Council has provided new and repurposed community facilities in the Northbridge locality including 258 Sailors Bay Road (Northbridge Library) and The Outpost Northbridge (Warners Park Centre). These community facilities meet residents needs in the locality.
- The proposed development meets the relevant objects of the Environmental Planning and Assessment Act, 1979 as follows:
  - 1.3(c) – The proposal is an orderly and economic use and development of land being for the vitalisation of an existing non-operational tenancy to provide a commercial premises use that is compatible with the desired character of development within the E1 Local Centre zone, and is consistent with the planning regime for the E1 zone.

- 1.3(g) – The proposed variation does not alter the existing building’s design and will not present any external amenity impacts upon the surrounding built environment.
- The proposed development meets the relevant aims of the *Willoughby LEP 2012* as follows:
  - 1.2.2(e) – The proposal will not detract from the amenity of the surrounding locality and will not result in adverse impacts upon adjoining properties.
  - 1.2.2(g) – The proposed change of use will contribute to the range of employment opportunities within the Northbridge Local Centre being within a major transport route as identified within the *Willoughby DCP 2023*.

### **Conclusion**

The development proposal has a variation to the 2.6:1 FSR control contained in Clause 4.4(2A)(b) of the *Willoughby LEP 2012*. The proposed variation is the result of the conversion of a use excluded from the calculation of GFA (*community facility*) to a *commercial premises* within an existing tenancy on the subject site – Lot 39, with no physical works proposed.

The variation does not seek to increase the existing development density on the site, and does not exceed the environmental capacity of the land as it does not physically result in any additional floor area on the site. The development intensity resulting from the use of the subject tenancy as a small-scale commercial tenancy can be suitably accommodated on the site noting the premises has appropriate pedestrian and vehicular access, and provides an excess of required parking spaces confirming the commercial use can be accommodated within the existing building circumstances.

The proposed variation is imperceptible and will not result in any external environmental impacts, noting the application seeks to vitalise an existing unutilised premises by providing a land use that is appropriate for the E1 Local Centre zone.

The variation does not attempt to affect the planning outcome for the broader locality; rather the proposed variation to the FSR control – conversion of existing floor area to a commercial use is comfortably accommodated within the existing building with respect to parking, access, and traffic generation.

The development will not impact upon the public domain or adjoining properties and will not generate external environmental impacts.

In my opinion, the proposed development for change of use and associated variation to the FSR development standard is well founded as the proposal meets the objectives of the development standard and achieves an acceptable planning outcome for the subject site that is in the public interest. In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the proposed development can be supported.

Chapman Planning Pty Ltd  
Member PIA

**ATTACHMENT 5: OFFICER’S CLAUSE 4.6 ASSESSMENT – FSR**

**Description of non compliance**

<b>Development Standard</b>	<b>FSR Standard</b>	<b>Proposed FSR</b>	<b>%Variation</b>
Cl 4.4 Floor space ratio	2.6:1 5,694m <sup>2</sup>	2.62:1 5,752m <sup>2</sup>	1% 58m <sup>2</sup> over the standard

**Key points of the applicant’s submission:**

- i) No physical works are proposed, so there are no impacts in respect to bulk and scale.
- ii) The new use allows for the activation and vitalisation of an existing tenancy that has not been used for more than 6 years.
- iii) Since the acquisition of the property, Council has provided new and repurposed community facilities in the Northbridge locality, which meet the residents needs.
- iv) Commercial use is compatible with the E1 Local Centre Zone.
- v) The proposal is consistent with the objectives of the FSR standard and the objectives of the zone.

**Assessment Officer Comments**

The development was approved in 1994 with an FSR in excess of the maximum permissible at the time, utilising the then provisions of State Environmental Planning Policy No. 1 (SEPP1) to allow the exceedance. Under the provisions at the time, the FSR calculation did not exclude the floor area of the community facility.

Upon the making of *WLEP 2012*, clause 4.4(2A)(b)(i) introduced a new control excluding the floor area of a building that “is to be used be used for community facilities” from the calculation of the gross floor area. Effectively, the calculation of the gross floor area for the subject building was reduced by the floor area of Lot 39. The effect of the current application is to revert to the previous calculation of FSR for the building.

The purpose of clause 4.4(2A)(b)(i) is to encourage the provision of community facilities.

There may be planning reasons to resist the conversion of community facilities floor area in a development that had relied on the provisions of clause 4.4(2A)(b)(i) to exceed the notional maximum FSR, as this may be considered a misuse of the provision.

In the subject case, the original application approved the proposed FSR through the provisions of SEPP1, without any reliance on the exclusion of the community facility from the calculation of gross floor area. Essentially, the proposed FSR has previously been approved in the original application.



**Objectives of Clause 4.6**

**4.6** (1) The objectives of this clause are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

<b>CI 4.6 Criteria</b>	<b>Response</b>
<b>4.6(2)</b> <i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>	The development standard is not expressly excluded from the operation of this clause.
<b>4.6 (3)</b> <i>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—</i>	
<i>a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and</i>	The applicant has provided a written request that seeks to justify the contravention of the development standard on the basis that compliance is unreasonable and unnecessary in the circumstances of this case.
<i>b) that there are sufficient environmental planning grounds to justify the non-compliance?</i>	The applicant's written request has sought to demonstrate sufficient environmental planning grounds.
<b>4.6(4)</b> <i>Development consent must not be granted for development that contravenes a development standard unless</i>	
<i>(a) Council is satisfied that:</i>	
<i>i) the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3)</i>	The applicant's written request has adequately demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance
<i>ii) the proposed development in the public interest because it is consistent with</i>	
<ul style="list-style-type: none"> <li>• <i>objectives of the particular development standard</i></li> </ul>	Yes, see assessment below
<ul style="list-style-type: none"> <li>• <i>objectives for the development within the zone in which the development is proposed to be carried</i></li> </ul>	Yes, see assessment below
<i>(b) the concurrence of the Planning Secretary has been obtained.</i>	The variation is not considered to raise any matter of regional and state significance, and concurrence of the Secretary is able to be assumed.



**Consistency with the objectives of the Floor Space Ratio development standard:**

Consistency of the proposed development with the floor space ratio standard's objectives is discussed below:

<b>Floor Space Ratio Development Standard Objectives</b>	<b>Response</b>
a) <i>to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,</i>	The proposed change of use does not impact on environmental capacity of the land as there are no works proposed. The site includes a range of existing commercial uses, and parking is provided for the use within the basement.
b) <i>to limit traffic generation as a result of that development,</i>	Traffic generation associated with a range of commercial uses will be similar to a community facility use. As discussed under the permissibility of the use, a limitation on the range of uses is proposed, to exclude uses such as food and drink premises, that would require a separate development application to consider potential impacts on traffic generation.
c) <i>to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i>	No works are proposed, and consequently no impacts will occur in respect to views, loss of privacy, overshadowing or visual intrusion.
d) <i>to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,</i>	No works are proposed and consequently there will be no impact on bulk and scale.
e) <i>to permit higher density development at transport nodal points,</i>	The site is located near to Northbridge Plaza, which has multiple bus services connecting to major centres in the district. The proposal is considered to be consistent with this objective.
f) <i>to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,</i>	NA.
g) <i>to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,</i>	The development does not impact on the primary character of Chatswood.
h) <i>to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,</i>	The development does not impact on the city centre of Chatswood.
i) <i>to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,</i>	The development does not impact on building scale.
j) <i>to encourage the consolidation of certain land for redevelopment,</i>	NA

<p>k) <i>to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.</i></p>	<p>The strata unit has not been used for a community facility purpose for about 9 years, despite the efforts of Council to find a suitable use. The change of use will allow Council to release the value of the asset and enable the provision of community facilities of a type and in a location to meet current community needs.</p>
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**Consistency with the objectives of the E1 Zone – Local Centre:**

Consistency of the proposed development with the Zone’s objectives is discussed below:

Zone Objective	Response
<ul style="list-style-type: none"> <li>• To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</li> </ul>	<p>The proposal allows for the use of the strata unit which has remained vacant for many years.</p>
<ul style="list-style-type: none"> <li>• To encourage investment in local commercial development that generates employment opportunities and economic growth.</li> </ul>	<p>The proposed use of the vacant unit will provide employment opportunities.</p>
<ul style="list-style-type: none"> <li>• To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.</li> </ul>	<p>NA</p>
<ul style="list-style-type: none"> <li>• To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</li> </ul>	<p>The proposal is for commercial premises that includes business, retail and other non-residential uses.</p>
<ul style="list-style-type: none"> <li>• To provide for services and employment within walking distance of residences.</li> </ul>	<p>The use of the unit will provide opportunity for retail or business services and employment within walking distance of dwellings on the site and in the local area.</p>
<ul style="list-style-type: none"> <li>• To generally conserve and enhance the unique sense of place of local centres by ensuring new development—</li> </ul>	<p>The proposal does not involve building works and will not alter architectural quality or character of the building or local centre.</p>
<p>(a) displays architectural and urban design quality, and</p>	
<p>(b) integrates with the desired character and cultural heritage of local centres.</p>	

Based on the above considerations, the proposed variation to the development standard is acceptable.

Variation of the standard is considered to be in the public interest because the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard.

**ATTACHMENT 6 - SECTION 4.15 (79C) ASSESSMENT**

The application has been assessed under the provisions of S.4.15 (79C) of the *Environmental Planning and Assessment Act*.

The most relevant matters for consideration are assessed under the following headings:

**Matters for Consideration Under S.4.15 (79C) EP&A Act  
 Considered and Satisfactory ✓ and Not Relevant N/A**

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policies (SEPP)</i></li> </ul>	
	<p><b>Comment:</b></p> <p><u>SEPP (Exempt and Complying Development Codes) 2008</u></p> <p>Exempt development includes the change of use from business premises, office premises and shop to another business premises, office premises or shops excluding</p> <ul style="list-style-type: none"> <li>• funeral chapels,</li> <li>• funeral homes,</li> <li>• beauty salons,</li> <li>• hair dressing salons,</li> <li>• uses involving skin penetration procedures,</li> <li>• restricted premises</li> <li>• goods repair and reuse premises,</li> <li>• retail of firearms.</li> </ul> <p>It is considered that Unit 39 is capable of being used for commercial premises other than those excluded above.</p>	
	<ul style="list-style-type: none"> <li>• <i>Local Environmental Plans (LEP)</i></li> </ul>	
	<p><b>Comment:</b></p> <p><u>WLEP 2012</u></p> <p>Clause 1.9A suspends the operation of the by-law that attempts to limit the use of the property contrary to the permissible uses within the zone under <i>WLEP 2012</i>.</p> <p>“Commercial premises” are a permissible use in the zone, however, in the absence of a more definitive proposed use, the range of uses that are suitable for the existing fabric and fit-out of Unit 39 are to be specified by consent condition, and consistent with the categories listed in the Codes SEPP as described above.</p> <p>Clause 4.4(2A) causes the calculation of gross floor area to increase as a result of the proposed use, and exceed the maximum FSR permissible for the site.</p> <p>Clause 4.6 allows Council to approve development that results in a breach of the maximum FSR standard. Attachment 5 provides an assessment of the written request to vary the maximum FSR and concludes that Council may be satisfied that the application is able to be approved.</p>	
(a)(ii)	<i>The provision of any draft environmental planning instrument (EPI)</i>	
	<ul style="list-style-type: none"> <li>• <i>Draft State Environmental Planning Policies (SEPP)</i></li> </ul>	
	<ul style="list-style-type: none"> <li>• <i>Draft Local Environmental Plans (LEP)</i></li> </ul>	<b>N/A</b>

**Matters for Consideration Under S.4.15 (79C) EP&A Act  
 Considered and Satisfactory ✓ and Not Relevant N/A**

	<b>Comment:</b> None relevant at the time of reporting.	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> <li>• <i>Development control plans (DCPs)</i></li> </ul>	
	<p><b>Comment:</b></p> <p><u>WDCP 2023</u></p> <p>The development satisfies relevant provisions of WCP 2023 including in respect to loading facilities and the provision of parking.</p>	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> <li>• Clause 61 EP&amp;A Regulation-Demolition</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Clause 62 EP&amp;A Regulation-Fire Safety Considerations</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Clause 64 EP&amp;A Regulation-Fire Upgrade of Existing Buildings</li> </ul>	✓
	<b>Comment:</b> No works proposed. No fire upgrade required. Annual fire safety statement condition recommend.	✓
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> <li>• Context &amp; setting</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Access, transport &amp; traffic, parking</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Servicing, loading/unloading</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Public domain</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Utilities</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Heritage</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Privacy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Views</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Solar Access</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Water and draining</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Soils</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Air &amp; microclimate</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Flora &amp; fauna</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Waste</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Energy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Noise &amp; vibration</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Natural hazards: Overland flowpath</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Safety, security crime prevention</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Social impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Economic impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Site design and internal design</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Construction</li> </ul>	NA
	<ul style="list-style-type: none"> <li>• Cumulative impacts</li> </ul>	✓
	<b>Comment:</b> No significant impacts	✓
(c)	The suitability of the site for the development	✓
	<ul style="list-style-type: none"> <li>• Does the proposal fit in the locality?</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Are the site attributes conducive to this development?</li> </ul>	✓
	<p><b>Comment:</b></p> <p>The site is considered suitable for the development.</p>	✓
(d)	Any submissions made in accordance with this Act or the regulations	✓
	<ul style="list-style-type: none"> <li>• Public submissions</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Submissions from public authorities</li> </ul>	NA

**Matters for Consideration Under S.4.15 (79C) EP&A Act  
 Considered and Satisfactory ✓ and Not Relevant N/A**

	<b>Comment:</b> See Attachment 3 for consideration of submissions.	
(e)	The public interest	
	<ul style="list-style-type: none"> <li>• Federal, State and Local Government interests and Community interests</li> </ul>	<b>NA</b>
	<b>Comment:</b> The change of use will facilitate the release of funds that will allow the reallocation of resources to meet the currently appropriate community needs, and this is considered to be in the public interest.	✓

**ATTACHMENT 7: SCHEDULE OF CONDITIONS**

**SCHEDULE**

**CONDITIONS OF CONSENT:** (including reasons for such conditions)

**CONSENT IDENTIFICATION**

The following condition provides information on what forms part of the Consent.

**1. LIMIT OF CONSENT- PERMITTED USES**

This consent is limited to the following types of commercial premises:

- business premises other than funeral chapels, funeral homes, beauty salons, hair dressing salons, uses involving skin penetration procedures, restricted premises, or goods repair and reuse premises, and
- office premises, and
- shops excluding retail of firearms.

Any other use shall require submission of another development application to address the specific requirements of the particular use.

(Reason: To limit the permissible uses, consistent with the capacity of the existing fit out)

**2. LIMIT OF CONSENT – CHANGE OF USE ONLY**

This consent does not approve any demolition or building works.

(Reason: To ensure any demolition or building works are subject to separate development application unless exempt)

**3. APPROVED PLAN/DETAILS**

The development must be in accordance with the following consent plans electronically stamped by Council:

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Existing Ground Floor Plan	EX 1.01	A	08/06/2023	Design Build
Car Park	EX 1.03	A	08/06/2023	

the application form and any other supporting documentation submitted as part of the application, except for:

(a) any modifications which are “Exempt Development” as defined under S.4.1(1) of the *Environmental Planning and Assessment Act 1979*;

(b) otherwise provided by the conditions of this consent.

(Reason: Information and ensure compliance)

**PRIOR TO OCCUPATION OF THE DEVELOPMENT**

**The following conditions of consent must be complied with prior to the issue of an occupation certificate.**

**4. ACCESS FOR THE DISABLED - DISABILITY DISCRIMINATION ACT**

The building/development must comply with the requirements of the Disability Discrimination Act.

It should be noted that this approval does not guarantee compliance with this Act and the applicant/owner should investigate their liability under this Act.

(Reason: Access and egress)

**ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

**The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.**

**5. ANNUAL FIRE SAFETY STATEMENT**

Attention is directed to Clause 177 of the *Environmental Planning and Assessment Regulation 2000* regarding the submission of an Annual Fire Safety Statement in relation to each essential fire safety measure implemented in the building or on the land on which the building is situated.

(Reason: Safety)

**6. HOURS OF OPERATION**

The hours of operation of the premises are to be restricted to those times listed below, i.e.:

Weekdays	7am to 7pm
Saturdays	8am to 2pm
Sundays & Public Holidays	Nil

Any extension to these hours is to be subject to the prior consent of Council.

(Reason: Amenity)

ATTACHMENT 8: NOTIFICATION MAP

Record of Responses Received by Council relating to:

DA: 2023/268

At: Lot 39, 135-139 Sailors Bay Road NORTHBRIDGE

