

Attachment D

**Attachment D - Clause 4.6 Variation
Request – Floor Space Ratio**



REQUEST UNDER CLAUSE 4.6 OF THE SYDNEY LEP 2012 and 68(2)(a)(ii) of the Housing SEPP

Co-Living Development
18-28 Briggs Street, Camperdown
Floor Space Ratio

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Camperdown

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1.0 The Proposal

This written request is provided in support of a development application (DA) that proposes the construction of a co-living housing at 18 – 28 Briggs Street, Camperdown.

This Clause 4.6 Request relates to a proposed departure from the maximum Floor Space Ratio applicable to the site pursuant to Clause 4.4 of Sydney Local Environmental Plan 2012 and Clause 68(2)(a)(ii) of the Housing SEPP.

1.1 Relevant Case Law

Clause 4.6(2) of the Sydney Local Environmental Plan 2012 (SLEP 2012) allows the consent authority to grant consent for development despite the development contravening a development standard imposed by the SLEP 2012 or any other environmental planning instrument.

In accordance with Clause 4.6(3), development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards to development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Randwick City Council V Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
4. *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406;
5. *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118; and
6. *Turland v Wingercaribee Shire Council* [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]). This Clause 4.6 Variation Request relies on the following:

- **The objectives/intent of the development standard are achieved notwithstanding noncompliance with the standard.**

The environmental planning grounds relied on in the written request under Cl. 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

1.2 Relevant Development Standard

The development standard to which this objection relates is Clause 4.4 Floor Space Ratio. Clause 4.4 Floor Space Ratio sets out the following:

(1) The objectives of this clause are as follows—

- (a) to ensure that buildings are compatible with the bulk, scale, streetscape and desired future character of the locality,*
- (b) to provide a suitable balance between landscaping and built form,*
- (c) to minimise overshadowing of, and loss of privacy to, neighbouring properties,*
- (d) to maximise solar access and amenity for public places,*
- (e) to manage the visual impact of development when viewed from public places, including the Parramatta River.*

(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](#).

Clause 68(2)(a) of the Housing SEPP sets out the following:

(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—

(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than—

(i) the maximum permissible floor space ratio for residential accommodation on the land, and

(ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,

Comment:

The Floor Space Ratio (FSR) map identifies a maximum FSR of 1.5:1 for the site. Clause 68(2)(a)(ii) of the Housing SEPP provides an additional 10% of the maximum permissible floor space ratio for development in a zone in which residential flat buildings are permitted if the additional floor space is used only for the purposes of co-living housing.

The site is zoned MU1 under Sydney LEP and residential flat buildings are permitted and the proposed development is for the purposes of co-living development.

The development proposes a total GFA of 1828.25m² and an FSR of 1.81:1, which equates to a 9.83% departure from the development standard.

1.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 1.4(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

*(c) the character, location, siting, bulk, scale, shape, **size**, height, **density**, design or external appearance **of a building** or work, [emphasis added]*

Comment:

The maximum floor space ratio at Section 4.4 of the SLEP 2012 is a development standard, as defined at Section 1.4 (Definitions) of the EP&A Act.

2.0 The Contravention

Table 1: Variation to Council's Maximum Floor Space Ratio			
	Control	Proposed	Variation
4.4 Floor Space Ratio	1.65:1	The development proposes a total FSR of 1.81:1.	9.83% departure from the development standard.

3.0 Justification of the Contravention

3.1 The Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site is centrally located within the Camperdown mixed use precinct that is in the process of transitioning from established industrial uses to a vibrant, high-density mixed-use neighbourhood. The site is located on the southern side of Parramatta Road in proximity to the Sydney University campus and the Royal Prince Alfred Hospital to the east, with Victoria Park beyond. Camperdown Park is located to the west of the site within 200 metres walking distance.

The immediate locality is characterised by a mix of land uses, including industrial, commercial, residential and hotel accommodation. There is no single uniform-built form surrounding the site, with buildings ranging from single-storey industrial buildings (including the site), rows of single and double-storey terrace housing, three to four-storey residential flat buildings, shop top housing and commercial buildings. Moving east from the site, towards Missenden Road, the density and built form increases to include five to six - storey shop top housing buildings and an eight-storey Rydges Hotel.

The site is also situated within the 'Camperdown Health, Education and Innovation Precinct' of the future 'Tech Central' technology and innovation district, which is planned to be the largest technology and innovation district in Australia. The Tech Central initiative is a long-term planning vision for three precincts (Camperdown, Haymarket and Eveleigh) led by the NSW Government and delivered collaboratively by the City of Sydney and Inner West Councils. The Camperdown Precinct is centered around Sydney University and Royal Prince Alfred Hospital, with a vision to expand existing uses to drive greater collaboration, better placemaking outcomes and positively impact health outcomes, reinforcing the central role of the university and hospital to the precinct.

Having regard to the established context of the site, there are several existing 4-storey buildings in proximity to the site, which are of a similar scale and form to the proposed development. The following **Table 1** should be read in conjunction with **Figure 2** below.

Table 1: Surrounding Development	
Address	Description
1 Missenden Road, Camperdown	The application was approved for a development with a FSR variation of 33.7%.

15-17 Marsden Street, Camperdown	The application proposed a development that resulted in a FSR variation of 7%.
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3.2 Consistency with the Mixed Use (MU1) Zone

The consistency of the proposal against the objectives of the Mixed Use zone is outlined below.

- *To encourage a diversity of business, retail, office and light industrial land uses that generate opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure land uses support the viability of nearby centres.*
- *To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.*

The proposed development will deliver accommodation for students and hospital workers within a built form that is consistent with the mixed-use setting of the site.

The design of the development encourages activation of the Briggs Street frontage with pedestrian access off this frontage and the placement of habitable room windows, including communal living room windows, at the ground level.

The proposed land use seeks to support the viability of Sydney University and the Royal Prince Alfred Hospital to the east of the site, by providing accommodation for students and hospital workers in an accessible location; to encourage use of public transport as well as walking and cycling to the campus and hospital.

The proposed development acknowledges the site's central location in the 'Camperdown Health, Education and Innovation Precinct' of the future 'Tech Central' district and its potential to support the operation of the university and hospital, through the delivery of co-living accommodation.

3.3 Consistency with Objectives of the Development Standard

The consistency of the proposal against the objectives of the development standard is outlined below.

- *to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*

The proposed development delivers adequate floor space to accommodate projected growth and long-term needs, particularly given its location to Sydney University and the Royal Prince Alfred Hospital to the east of the site, by providing accommodation for students and hospital workers in an accessible location; to encourage use of public transport as well as walking and cycling to the campus and hospital.

- *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*

The proposal maintains appropriate density and built form, ensuring manageable traffic generation and land use intensity.

- *to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*

The development aligns with the capacity of current and planned infrastructure, supporting sustainable growth.

- *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 development as proposed reflects the desired character of the locality and will not result in any adverse impacts on the existing amenity. General positive feedback from Council's Design Advisory panel has been received.

3.4 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of the SLEP 2012 requires the departure from the development standard to be justified by demonstrating:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Comment

The proposed increase in FSR does not result in adverse amenity or built form impacts on the surrounding area and the development remains consistent with that of surrounding development in terms of scale, built form and context.

3.5 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

Clause 4.6(3)(b) of the SLEP 2012 requires the departure from the development standard to be justified by demonstrating:

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

Comment

It is our opinion that there are sufficient environmental planning grounds to justify contravening the maximum floor space ratio development standard in this instance. These are as follows:

- The development is consistent with the objectives of the MU1 Mixed Use zone, facilitating the delivery of accommodation for students and hospital workers, acknowledging the proximity of the site to the Sydney University Campus and Royal Prince Alfred Hospital.
- The development meets the objectives of Section 4.4 of the SLEP 2012.
- The proposed development is consistent with the Camperdown precinct locality statement, which envisages a “transformation from industrial uses to a vibrant high density mixed-use neighbourhood.”
- The proposed development acknowledges the site’s central location in the ‘Camperdown Health, Education and Innovation Precinct’ of the future ‘Tech Central’ district and its potential to support the operation of the university and hospital, through the delivery of accommodation for students and hospital workers.
- The development will contribute to alleviating pressure on the broader residential rental market, by delivering a housing choice for students and hospital workers in proximity to the university campus and hospital.
- The proposal is responsive to current market demand, acknowledging the current low rental vacancy rates.
- The proposed development will deliver accommodation in an accessible location; that will encourage use of public transport as well as walking and cycling to the Sydney University Campus and Royal Prince Alfred Hospital.
- The proposed development is contextually appropriate for the site, noting the varied scale of buildings in the immediate and surrounding locality.
- The proposed development would engender a neutral impact on the heritage significance of the heritage items in the vicinity of the site, as detailed in the accompanying Statement of Heritage Impact.
- The development has been designed to mitigate amenity impacts on adjoining properties having particular regard to overlooking, overshadowing and acoustic impacts.
- The development of the site will not preclude the future development of the adjoining land.

- The proposed variation will not set an undesirable precedent for the locality, acknowledging the fact that there is no distinct uniform built form across the precinct, but rather a mix of building heights and built forms; which the proposed development is compatible with.

4.0 Conclusion

The proposed contravention of the maximum floor space ratio is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal presents an individual circumstance to which the objectives of Clause 4.6 are applicable, namely, to achieve better outcomes for development by allowing flexibility in particular circumstances.
- Strict compliance with the maximum floor space ratio development standard would provide no discernible benefit to the development, acknowledging that the development is site responsive as well as achieving compliance with the applicable co-living non-discretionary requirements and development standards of the Housing SEPP.
- The proposed development will not create an undesirable precedent.

In view of the above, it is considered that this written request has adequately addressed the matters at Clause 4.6(3) of the SLEP 2012 and Council's support to contravene the maximum floor space ratio development standard, at Section 4.4 of the SLEP 2012 and Clause 68(2)(a)(ii) of the Housing SEPP, is therefore sought.



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