

Attachment D

<p>Clause 4.6 Floor Space Ratio Variation Request</p>

3 October 2019

Ms Julia Errington
Planner
City of Sydney Council
GPO Box 1591
Sydney NSW 2001

**Re: Clause 4.6 Submission for:
Clause 4.4 Floor Space Ratio of Sydney LEP 2012**

**To accompany the development application for proposed alterations and additions to
Unit 901, 13-15 Bayswater Road, Potts Point**

1.0 Introduction

The development standard to which this request for a variation relates is Clause 4.4 of the Sydney LEP 2012 – Floor Space Ratio. A maximum FSR of 5:1 applies to the subject site.

The purpose of this 4.6 submission is to formally seek support for a proposed bathroom 7m² located on the existing rooftop terrace. The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of developments standards in order to achieve better planning outcomes for the development.

On behalf of the owners, a request is sort in accordance with Clause 4.6 (3)(a) and (b) of the Sydney LEP 2012 seeking a variation of the development standard by demonstrating:

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

The proposal seeks flexibility in the application of the FSR development standard to the development in the circumstance of this particular case as the existing building also breaches the FSR development standard. The works will not unreasonably impact the external appearance of the building and are necessary to enhance the amenity and functionality of the rooftop terrace for Unit 901.

The non-complying element of the proposed development is an additional 7m² of GFA. The maximum FSR standard is 5:1 (8,480m²). The existing FSR does not comply at 9,798.5m². This additional numerical breach is considered minor and acceptable as it is the outcome of a well balanced design solution to meet increased amenity.

2.0 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The existing site does not comply with maximum FSR. Strict compliance for Unit 901, 13-15 Bayswater Road, Potts Point would be therefore considered unreasonable given that the overall increase in FSR is only 7m².

An assessment is provided below in regard to the five part test under *Wehbe v Pittwater Council*. It was stated that it may be sufficient to establish compliance with only one part of the tests for it to be determined whether a development standard could be considered to be unreasonable or unnecessary.

As demonstrated below, the proposal satisfies number one of the test established in *Wehbe* and for that reason, the development standard is considered unreasonable and unnecessary in this instance.

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

Despite the non-compliance, the proposal is consistent with the desired general residential density character of the area. It is felt the objectives of the standard have been achieved notwithstanding non-compliance with the numerical standard as detailed below.

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

Comment

As noted the existing building exceeds the relevant development standard and therefore any additions to this building would require a variation in the standard.

The proposed increase of the development is only 7m² which is considered a minor increase. It is a minor departure from the existing FSR. With the existing building meeting the anticipating development needs, therefore this minor increase will also be still meeting these needs.

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

Comment

The proposal is located on the roof top terrace which is an approved open space area to the apartment. The density of the existing building will not be intensified as the proposal will remain as a single residential use of the residential flat building. The rooftop will remain as a non-habitable open area for recreational use.

There will be a slight increase to the built form however the building envelope will be similar to the existing as the structure is setback from the boundary and will not be visible from the street.

The proposed development will increase the total GFA on the site and therefore the land use intensity however this is very minor at 7m². This is appropriate in this circumstance as it will improve the site by providing an increase in the amenity of the rooftop for the owners.

The proposed development does not give rise to any additional impacts from pedestrian or vehicle traffic as it remains as a single unit. Given the proposal is for an additional floor space of 7m² to the rooftop terrace, the generation of vehicle and pedestrian traffic will not change from that of the existing.

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

Comment

The proposed alterations and additions are limited to the rooftop of unit 901 and limited to an additional 7m². The proposal will retain the existing single residential use of the unit which will not be intensified. The proposal will continue to provide a development on site that is commensurate with the capacity of existing and planned infrastructure in the surrounding areas.

(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.

Comment

The proposal does not seek to alter the existing use of the site and will provide a well designed outdoor area to complement the existing unit. The development will have a minor impact on the external appearance of the existing building. The bathroom is located adjacent to the existing Plant Room. It is located over 11m from the closest side boundary facing the street. There will be a slight increase to the bulk of the building however this will be minimal due to the large setbacks which ensure it will not be visible from the street below.

The new development reflects the desired character of the area as it is consistent with adjoining rooftop terraces. It will allow the building as a whole to be more uniform. As the proposed non-compliance is minor and located on the rooftop, the works will not result in any adverse impacts on the locality. There will be no adverse impacts on the amenity of the locality as the existing use of the site has not been altered.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

As it has been established the objectives have been met in Test 1, compliance with Test 2 is not applicable.

Test 3- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

As it has been established the objectives have been met in Test 1, compliance with Test 3 is not applicable.

Test 4- The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

As it has been established the objectives have been met in Test 1, compliance with Test 4 is not applicable.

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

As it has been established the objectives have been met in Test 1, compliance with Test 5 is not applicable.

4.0 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

As the existing building exceeds the 5:1 FSR development standard, it is inevitable that any additional floor space in Unit 901 would also not comply with the standard. However, the proposed alterations and additions are required to bring the development into contemporary amenity expectations and to improve the functionality of the rooftop terrace. The proposed bathroom will not be visible from the street as this will occur on the top floor of the residential building. The proposal will improve a poorly functioning outdoor space with increased amenity. The proposed works will not result in any adverse impacts to neighbouring terraces as there is currently 2m high solid walls located on the boundary to the south and west. Importantly, the works will have no adverse impacts on visual privacy, solar access or views to neighbouring terraces.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b). The objectives of the Floor Space Ratio standard have been achieved because the minor increase will provide increased amenity and development needs for the foreseeable future, it will have a minor impact on the built form with no increase to traffic, will not change the existing residential single use of the unit and has no impact on neighbouring terraces.

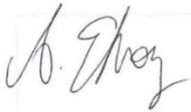
The proposal is not considered to raise any matter of significance for State or regional environmental planning. The extent of additional non-compliance is minor, and will be contained on the existing rooftop terrace. The proposed works are on the tenth level, will not be visible from the street and will enhance the amenity and functionality of the existing terrace without impacting neighbouring properties. There is no public benefit in maintaining the development standard on an existing non-compliant building as it would effectively preclude improvements to the building. Rather, there is a public benefit in allowing improvements to the amenity and functionality of the unit. Accordingly, the proposal is consistent with the matters required to be taken into consideration.

5.0 Conclusion

For the reasons provided above, it is felt this written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal is consistent with the character of the area and will have no impact

to neighbouring properties and will not cause any overshadowing. The development is a minor modification to the existing building and will not obstruct views.

The roof top terrace is an approved open space area to the apartment. It is a non-habitable area. The proposed changes are to provide increased amenity. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the B2 Zone pursuant to the LEP. Therefore we request the variation to Clause 4.4 – Floor Space Ratio development standard is supported by council.



Amanda Elboz
Director