

# **Attachment B**

<h2><b>Clause 4.6 Variation</b></h2>
--------------------------------------



CLAUSE 4.6 TO CLAUSE 4.4 OF SYDNEY LEP 2012  
EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

*Partial demolition, and the alterations and additions to two (2) existing semi-detached dwelling houses, and construction of a three-storey mixed-use development comprising two (2) ground floor home offices and four (4) apartments*

45 – 47 CROWN STREET  
WOOLLOOMOOLOO

PREPARED BY  
ABC PLANNING PTY LTD

JULY 2019

## **SYDNEY LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 variation request has been prepared to accompany the development application for the partial demolition plus alterations and additions to two (2) existing semi-detached two-storey dwelling houses, and the construction of a three-storey plus attic, mixed-use development, containing two (2) ground floor home offices and four (4) studio apartments, at 45- 47 Crown Street, Woolloomooloo.

Clause 4.6 of the Sydney LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*.

### **Clause 4.6 Exceptions to development standards**

- (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.*
- (2) *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.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

### **Development Standard to be Varied**

The proposal seeks a variation to the development standard contained within Clause 4.4 of the SLEP2012 - maximum FSR of 2:1, demonstrated on the LEP map in **Figure 1** below.

The proposed FSR is a variation from the maximum permitted, having an FSR 2.17:1 which is 8.5% (19.21m<sup>2</sup>) above the development standard of 2:1 in the LEP.

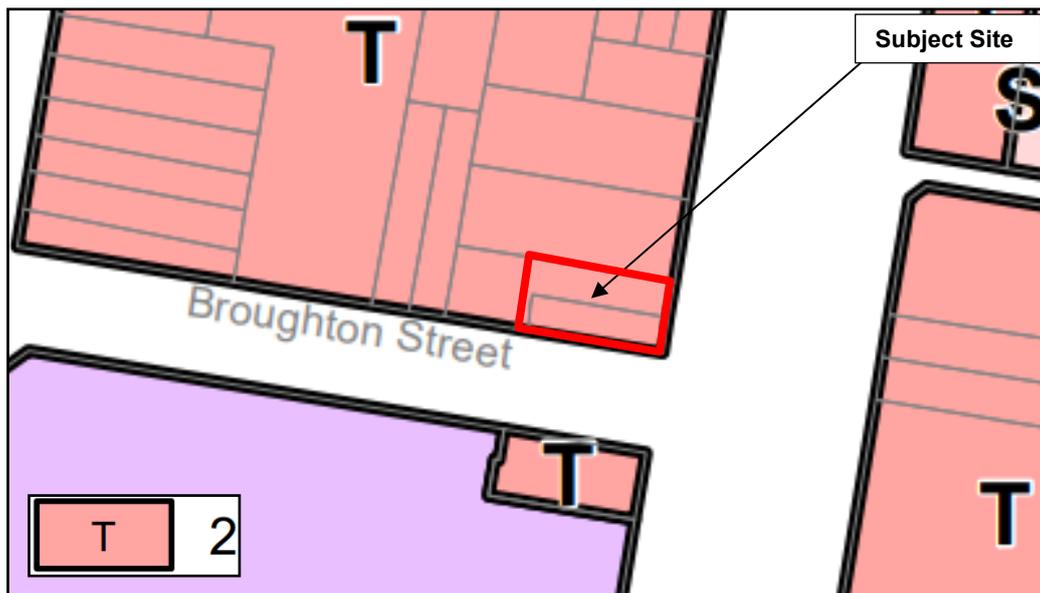


Figure 1: FSR Map

### Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

**Assessment:** It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposed built for presents as three-storey with a mansard roof element to the street frontages, which is consistent with the form of development contemplated by the height controls.
- The proposal provides for two outdated low-quality residential dwellings on the site to be restored with two new high-quality home office spaces and four studio apartments, contributing to the amenity and revitalisation of the area.
- Preservation of the contributory elements of the existing two-storey semi-detached terraces to the heritage conservation area, and preservation of the sandstone wall listed heritage item.
- Lack of external impact to neighbouring properties and the streetscape in relation to visual and acoustic privacy, overshadowing, and visual bulk, whilst no view impacts are identified. The suitable siting of the development confirms the height, bulk and scale is appropriate for the site.
- The site is well serviced by public transport, being within close proximity to numerous bus routes along William Street and Crown Street, whilst the site is also within easy walking distance of shops, recreation areas and outdoor public open space.

- The fragmented form of development, whereby the building is separated into two distinct elements being the new RFB component and the retained semi-detached terraces, ensures that the built form is provided in a separate and discreet manner, whereby the additional FSR would not be discernible from any public or private vantage point.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

<b>Consistency with the objectives of the FSR standard in the LEP</b>	
<b>Objectives</b>	<b>Assessment</b>
4.4(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,	<b>Complies</b> – The proposal is for the partial demolition plus alterations and additions to existing semi-detached terraces to provide for a mixed-use development. The proposed FSR will provide for commercial home office space and residential accommodation within the B4 mixed-use zone, whilst retaining the contributory element of the semi-detached terraces to the surrounding heritage conservation area.
4.4(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,	The proposal is not expected to have a significant impact on vehicle and pedestrian traffic. The subject site is within proximity of good public transport services, while the extensive surrounding pedestrian network can accommodate the increased density. The proposal includes vehicle traffic demand management with car parking facilities not forming a part of the proposal.
4.4(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,	Given that the proposal is permissible in the B4 zone, and complies with the height standard and storey height control, the proposed bulk and scale of the mixed-use development is commensurate with the capacity of existing and planned infrastructure as envisaged by the planning controls.
4.4(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.	The proposed mixed-use development is consistent with the desired future character of the area, as envisaged by the planning controls. The proposal is permissible in the B4 zone, and complies with the height standard and storey height control, whilst the built form is suitably sited in its context. Significant external amenity impacts with regards to overshadowing, visual and acoustic privacy, visual impact from bulk and scale, and view impacts onto the streetscape and surrounding neighbours are not identified.
<b>Consistency with the objectives of the B4 Mixed Use Zone</b>	
<b>Objectives</b>	<b>Assessment</b>
<ul style="list-style-type: none"> <li>• To provide a mixture of compatible land uses.</li> <li>• To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li> <li>• To ensure uses support the viability of centres.</li> </ul>	<b>Complies</b> – The proposal is for a mixed-use development comprising of home office space at the ground floor and residential accommodation on upper levels. The subject site is in a locality that has good access to public transport, including bus and train services within walking distance. The proposed mixed-use development will support an active street frontage, with the additional residents within the area contributing

	to the social fabric and economic viability of the area. The variation to the FSR standard does not undermine the ability of the proposal to satisfy the zone objectives.
--	---

Based on the above assessment, it is considered that strict compliance with the FSR standard of the LEP is unreasonable and unnecessary in this instance.

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard*

**Assessment:** It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which include:

- The variation is minor in nature being a variation of 8.5% (19.21m<sup>2</sup>) from the LEP standard.
- No unacceptable adverse impacts on neighbouring development on Crown Street or Broughton Street, given that the proposal will not result in any overshadowing, visual or acoustic privacy impacts, visual bulk and scale impacts, or view loss, than would a compliant development.
- The minor FSR non-compliance will not result in adverse amenity impacts to neighbouring properties in regard to overshadowing. Given the east-west orientation of the subject site and the lot being a corner lot with street frontages to the south and east, solar access is reasonably maintained to the adjoining property at No. 12 Broughton Street and at opposite the site at No. 47 Crown Street, and at Nos. 68-70, 72, and 74 Crown Street.
- The proposed development does not result in additional privacy amenity impacts onto adjoining neighbours from the proposed FSR variation. In this regard, living rooms to apartments are oriented to respective street frontages, with blank party walls to adjoining neighbours. Balconies fronting Broughton Street have a limited interface with dwellings opposite, and are generously separated from openings recessed from the street frontage opposite the subject site.
- The proposed minor variation to the FSR will not have any unreasonable visual bulk and scale impacts onto the Crown Street and Broughton Street streetscape. The FSR variation contributes to a compatible streetscape outcome with the existing development, with the area intermingled with residential and commercial land use, with a mix of older two and three-storey terraces with commercial and residential use, and newer mixed use commercial and residential developments of various heights, including greater than 15 storeys in height.
- The proposal maintains the character of the streetscape and contribution to the heritage conservation area, through the retention of the existing semi-detached terraces. The articulated façade, plus the recessed balconies, mansard roof element, and the separation of the built form into two distinct components, contributes to breaking down the scale and bulk of the built form on the subject site, and ensures that the FSR variation will not be responsible for any unreasonable streetscape impacts, as shown on the photomontage and elevation in **Figure 2** below:



Figure 2: Crown Street Photomontage

- Given the topography of the subject site and surrounding landscape, significant views are not affected by the bulk and scale of the proposed FSR of the development.
- The development is in the public interest given proposed FSR variation allows for the provision of a mixed-use development including commercial space comprising two home offices, and residential accommodation comprising four studio apartments, with good internal amenity, in an accessible location, being in close proximity to public transport, local services, and facilities.
- It is considered that an environmental benefit has been achieved from partial replacement of an existing RFB with poor amenity, with one that achieves high internal amenity without compromising the amenity of neighbouring properties.

Based on the above combination of the internal and external amenity factors, it is considered that there are sufficient environmental planning grounds to permit the FSR variation in this instance.

**Other Matters for Consideration**

*4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

**Assessment:** The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the B4 Mixed Use zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor FSR variation.

The proposal provides for the preservation of the contributory elements of the existing two-storey semi-detached terraces to the heritage conservation area and preservation of the sandstone wall listed heritage item.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

*(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above.

## Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 45 – 47 Crown Street, Woolloomooloo and is requested to be looked upon favourably by the consent authority.