Attachment E

Clause 4.6 Variation Request – Floor Space Ratio

PLANNING
INGENUITY

AMENDED CLAUSE 4.6 VARIATION STATEMENT (FSR)

MAXIMUM FLOOR SPACE RATIO – CLAUSE 4.4 OF SYDNEY LEP 2012

1 Toxteth Road,
GLEBE

Prepared for: Antoniades Architects Pty Ltd

OUR REF: M200070
13 January 2021

Clause 4.6 variation statement – maximum FSR (clause 4.4)

1. FSR Standard

Clause 4.4 of SLEP 2012 prescribes the maximum floor space ratio (FSR) for the site and refers to the *Floor Space Ratio Map.* The relevant map [sheet FSR_001] as illustrated in figure one indicates that the maximum FSR permitted at the subject site is 0.7:1, equating to a maximum FSR of 302.33m^2.

Figure 1 Prescribed Floor Space Ratio 0.7:1 (Source: SLEP 2012)

The floor space ratio of buildings on a site is the ratio of the Gross Floor Area of all buildings within the site to the site area. Gross floor area is defined to mean:

> *"…the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*
>
> *(a) the area of a mezzanine, and*
>
> *(b) habitable rooms in a basement or an attic, and*
>
> *(c) any shop, auditorium, cinema, and the like, in a basement or attic,*
>
> *but excludes:*
>
> *(d) any area for common vertical circulation, such as lifts and stairs, and*
>
> *(e) any basement:*
>
> *(i) storage, and*
>
> *(ii) vehicular access, loading areas, garbage and services, and*
>
> *(f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*

(g) car parking to meet any requirements of the consent authority (including access to that car parking), and

(h) any space used for the loading or unloading of goods (including access to it), and

(i) terraces and balconies with outer walls less than 1.4 metres high, and

(j) voids above a floor at the level of a storey or storey above.

2. Proposed variation to FSR development standard

The amended architectural plans indicate that the proposed development has a maximum FSR of 0.765:1 (330m^2) and is therefore non-compliant. The extent of non-compliance is a maximum of 27.67m^2 (9.15%) The existing development on site contains an FSR of 0.8:1 (367m^2) and therefore this proposed development (as amended) in fact reduces the gross floor area.

The difference in FSR between the existing and proposed layout is because of the internal alterations to the existing building. This is represented in Figures 2 to 7 below. Notably, in the GFA plan below, there is an existing area located at the Toxteth Road end of the building that is currently used as a narrow bathroom and kitchen area for unit 12. This space has very poor amenity and will be utilised as plant in the proposed dwelling, hence is becomes excluded from GFA calculations.

Figure 2 Existing lower ground Gross Floor Area

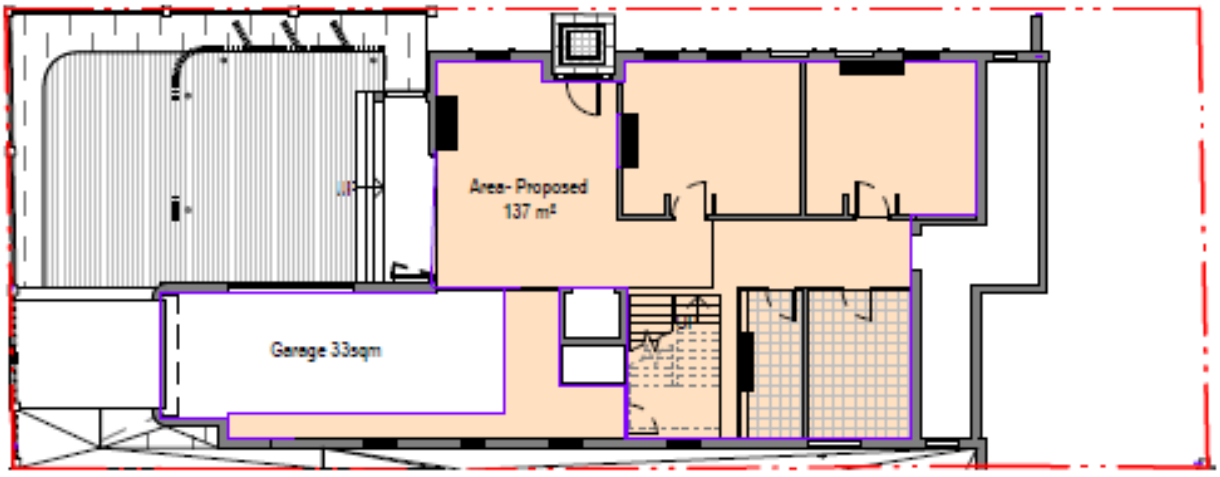

Figure 3 Proposed lower ground Gross Floor Area

Figure 4 Existing ground floor Gross Floor Area

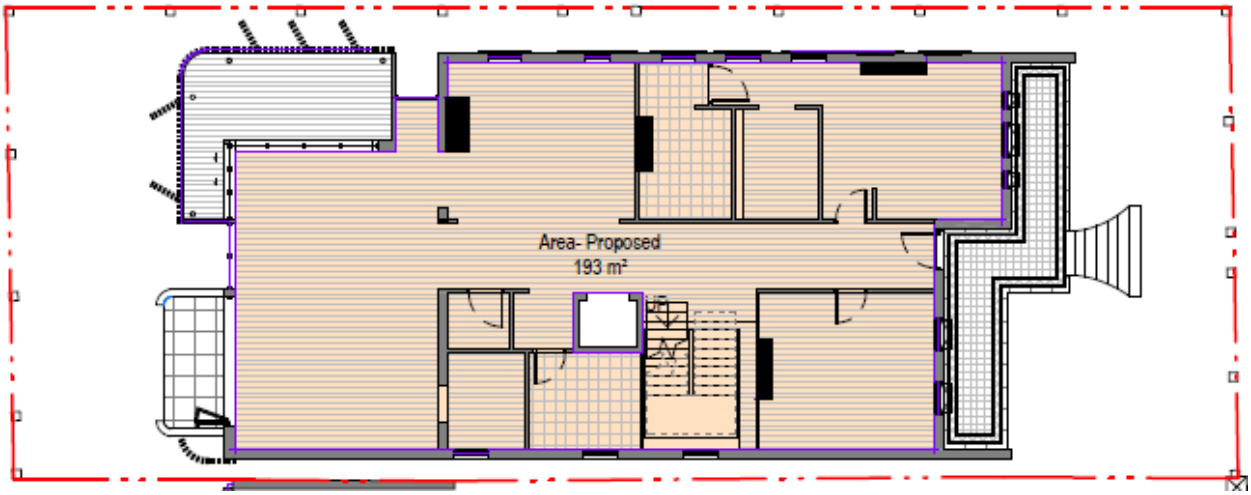

Figure 5 Proposed ground floor Gross Floor Area

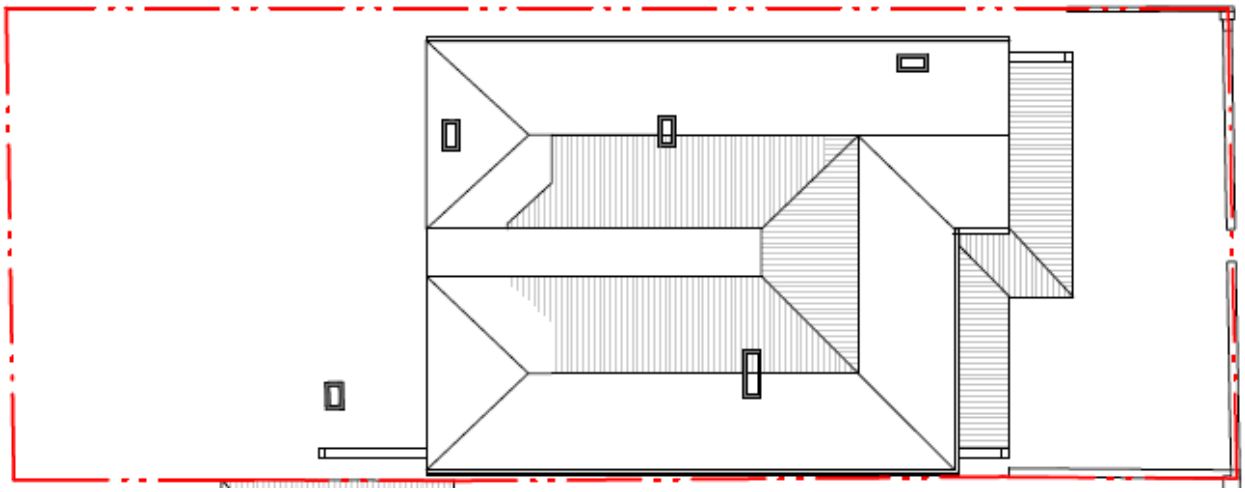

Figure 6 Existing roof (no change proposed)

The existing and proposed GFA is summarised as follows:

	Proposed GFA	Existing GFA
Level LG	137m²	201m²
Level GF	193m²	166m²
Level 1	NA [13]	NA
Total	**330m²**	**367m²**

3. Clause 4.6 of SLEP 2012

The objectives and provisions of Clause 4.6 are as follows:

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 Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note— When this plan was made it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,

(cab) clause 4.5A (Balconies on certain residential flat buildings),

(cb) clause 5.3A (Development below ground level in Zone RE1),

(cc) clause 6.10 (Heritage floor space),

(cd) clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),

(cda) clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),

(ce) clause 6.17 (Sun access planes),

(cf) clause 6.18 (Exceptions to sun access planes),

(cg) clause 6.19(1)(d)–(h) and (j), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, or a community notice or public information sign,

(cga) clause 6.26 (AMP Circular Quay precinct),

(cgb) clause 6.29 (58–60 Martin Place, Sydney),

(cgc) clause 6.33 (230–238 Sussex Street, Sydney),

(cgd) clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,

(cge) clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),

(cgf) clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),

(cgg) clause 6.41 (7–15 Randle Street, Surry Hills),

(cgh) clause 6.42 (102–106 Dunning Avenue, Rosebery),

(cgi) clause 6.40 (2–32 Junction Street, Forest Lodge),

(cgj) clause 6.43 (Danks Street South Precinct),

(cgk) clause 6.52 (1–11 Oxford Street, Paddington),

(ch) Division 1 of Part 7 (Car parking ancillary to other development).

It is noted that Clause 4.4 is not "expressly excluded" from the operation of Clause 4.6. Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum floor space ratio of 0.765:1 which equates to a numerical variation of 27.67m^2 and a percentage variation of 9.15%.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

> *"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

> *"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ refers to *Wehbe* and states:

> *"…Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 24) states:

> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum FSR:

1. The FSR variation will result in a single detached dwelling, returning the building to its former glory. The dwelling was constructed in 1891 and was approved in the 1970's for rear extensions, as per the Heritage Impact Statement attached to this development application. The proposal will not increase the existing FSR found on site, but will rather redistribute the existing GFA consistent with the standard definition. There is an overall decrease to GFA provided on the site.

2. Regardless of numerical FSR compliance, the building will appear to be visually consistent with the development existing on the adjoining properties, including Nos. 3 and 5 Toxteth Road, particularly when viewed from the rear at Avenue Lane. Therefore, the proposal will be consistent with local built form typology and character, including rear alignment to Avenue Lane.

Notably, the following nearby approvals confirm that an FSR standard of 0.7:1 has been regularly exceeded and this is reflective of the varying building sizes and subdivision layout of the locality:

- D/2009/1794 for alterations to No. 3 Toxteth Road was approved on 24 December 2009 and Council's assessment report notes a Floor Space Ratio of 1:1; and
- D/2016/1396 for alterations to No. 4 Toxteth Road was approved on 24 January 2017 and Council's assessment report notes a Floor Space Ratio of 0.8:1.

3. Furthermore, insisting on full compliance to a development with no significant impacts on the amenity of adjoining properties would be disproportionate to the loss of internal amenity of the future occupants of the proposal. In this regard, the proposed rear wall alignment is positioned adjacent to the north-eastern corner of the building on No. 3 Toxteth Road, with the extended Juliet balcony proposed bordered by a privacy screen on its western edge. Noting also that there is an existing garage with open roof deck on No. 3 Toxteth Road that gives the ability to look straight into the rear (northern) area of the subject site.

Figure 7 Rear of No. 3 Toxteth Road viewed from Avenue Lane

In terms of solar impacts, the submitted shadow diagrams confirm that shadows largely fall into the subject site and/or the adjacent street frontages, and that the northern façade of No. 3 Toxteth Road remains in full sun throughout mid-winter.

4. The amended proposal will facilitate significantly improved internal amenity for the occupants by providing an open plan kitchen, dining and living area at ground floor. A supplementary living space at lower ground adjoining the private open space, including a two car garage significantly improves the underutilised rear space located on site. Whilst providing a high quality and improved amenity family home, the development does so with no adverse impact on the amenity of adjoining properties, as outlined above.

5. The objectives outlined in Clause 4.4 regarding Floor Space Ratio pertain to controlling bulk and scale whilst preserving adequate landscaping. As outlined previously, the development seeks to maintain and redistribute the existing GFA, whilst providing a suitably new rear wing. There is currently no landscaping found on the subject site, with the exception of patches of shrubbery found in the front setback. The development will provide a much needed increase to deep soil and hard landscaping on the site, increasing the deep soil area to 22% of the site areas.

6. It is not pressed that the FSR development standard has been thrown away by City of Sydney Council, however, it terms of resultant bulk and scale it is noted that Nos. 2 and 3 Toxteth Road have been approved under DA/2016/1396 and DA/2009/1794 for alterations and additions to the existing dwellings respectively. Importantly, both applications were approved with Clause 4.6 variations for additional FSR given the buildings exhibited consistency with the scale of surrounding properties, provided no impact upon the Toxteth Heritage Conservation Area. Council, acting consistently,

should come to a similar conclusion with the subject variation as the proposed additions exhibit similar attributes and conclusions to the approved additions.

7. The proposed variation to the FSR will not result in a detrimental change to the character of the area. To the contrary, the primary alterations and additions are located to the rear of the property where the existing rear wing is currently in a state of dilapidation and an eye soar upon the public domain. The additions will provide a contemporary addition to the building which respects the heritage conservation area and subject contributory building. Furthermore, the proposed additions will be compatible with the existing and approved additions at Nos. 3 and 5 Toxteth Road when viewed from Avenue Lane to the rear.

8. The proposed development meets the objectives of the development standard and meets the objectives of the R1 General Residential zone (as further detailed in Section 7 below);

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development particularly given the subject building is considered a contributory building within the *Toxteth Heritage Conservation Area*. The FSR will decrease the existing FSR exhibited on the site and will provide a high quality design and outcome specific to the site and the development, significantly improving the amenity and liveability of the building.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118,* Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

> *86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
>
> *87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (Clause 4.6(4((a)(ii))

Objectives of the Development Standard

The objectives and relevant provisions of Clause 4.4 of SLEP 2012 are as follows, inter alia:

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

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 are addressed in turn below.

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

This objective articulates that floor space will meet the needs for the future occupants.

The proposed development (as amended) has been designed to significantly improve the amenity and useability of the existing building to meet the needs of future occupants. The existing building offers substandard amenity and was not originally designed for use as a boarding house. The existing rooms have poor accessibility, present safety issues to the occupants and require significant refurbishment (refer to the reports submitted with the accompanying Affordable

Rental Housing Report lodged with the amended application). The proposal will provide a total of 4 bedrooms and a rationalised ground floor living arrangement with significantly improved liveability, privacy, solar access and ventilation.

Whilst acknowledging the existing development on site does not conform to the LEP control, an overall decrease to the gross floor area is proposed. The requested GFA redistribution will create a sufficiently sized family home within a high amenity location, which will support the demands of the future occupants.

The burden of insisting on strict compliance would result in the partial removal of the building. This would result in an unnecessary and unreasonable planning outcome given the minor nature of the non-compliance and the contributory buildings significance within the Toxteth Heritage Conservation Area.

As such, the proposal will satisfy objective (a).

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

This objective articulates that the FSR control is to establish standards of maximum development density and intensity.

The proposal is considered to provide a compatible density with regards to the desired future character of the *Toxteth Heritage Conservation Area*. The proposed development will retain and upgrade the front and rear façade to ensure the low density character of the existing building is maintained without increasing the intensity of use whilst providing formal vehicle parking arrangements.

The site is zoned R1 General Residential which anticipates a mixture of residential densities. The existing building and immediate locality reflects this zoning, with single detached dwellings sitting side by side with walk-up residential flat buildings and terrace style development. The development is within close proximity to commercial and community facilities lining Glebe Point Road and will contribute to the dwelling mix in the area, whilst acknowledging the abundance of surrounding boarding house and studio apartment housing.

Resultantly, the proposed development will sit comfortably within the surrounding development. It is noted that Nos. 2 and adjoining 3 Toxteth Road contain rear alterations and additions which have been approved with FSR non-compliance. When viewed from Avenue Lane to the rear, the development will provide a much needed building renovation whilst remaining entirely consistent with the density of development in the immediate locality despite the existing minor non-compliance. This ensures that the development will not generate any adverse increase of vehicular or pedestrian traffic which will unreasonably impact the locality.

Accordingly, the proposed development provides a suitable density and intensity of use within the R1 General Residential Zone and the low to medium density character of the immediate locality.

As such, the proposal will satisfy objective (b).

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

This objective seeks to ensure that the proposed development is commensurate to infrastructure in the locality.

The proposed additions are compatible with the R1 General Residential zone and will provide a dwelling which hosts sufficient parking, reducing the demand for on-street parking in the immediate locality as experienced with the current boarding house and parking arrangements. The minor FSR variation will not increase the intensity of use.

The subject site is currently connected to existing electricity, water and sewage services and will continue to utilise these services as part of this development. The FSR variation will not adversely impact the services within the locality.

With regards to transport infrastructure, it is noted the subject site is within walking distance to numerous bus routes along Glebe Point Road and Wigram Road including the 431, 433 and 370 which will continue to be utilised by the occupants of the proposed development. Further, the development is within close proximity to Glebe and Jubilee Park Light Rail stations, providing services across the inner west. As such, the minor FSR variation will not impact the function of the existing and planned transport infrastructure of the locality.

Therefore, the proposal is consistent with objective (c).

Objective (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"

Objective (d) seeks to ensure that new development reflects the desired character of the locality and minimises impacts to the amenity of the locality.

The proposed development will provide alterations which are complimentary to the heritage items within the locality whilst also improving the visual appeal from the street. This ensures that the character of the contributory item and neighbouring dwellings is maintained and in accordance with the principles outlined within the Toxteth Locality Statement.

The proposed rear alterations to the development will visually appear to be entirely consistent to properties to the west which have rear access including Nos. 3 and 5 Toxteth Road and extend to connect with Avenue Lane. Therefore, the proposed bulk and scale will not appear visually jarring, however, there will be a net improvement to site landscaping to complement the residential setting of the site.

The development meets the principles outlined in the *Toxteth* locality statement as stipulated below;

> *'…(a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.*
>
> *(b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.*
>
> *(c) Retain elevated glimpses along terminating streets to the Harold Park paceway site and long views across the contours that reveal the topography*
>
> *(e) Provide large setbacks to plant substantial vegetation including large trees to enhance the streetscape…'*

The proposal has been designed to retain and upgrade the existing front, side and rear façade, to provide an upgrade to the rear wing and enhancing the period elements of the heritage contributory building and further complimenting surrounding heritage items and the wider Toxteth Heritage Conservation Area. When considering the amenity of neighbouring properties, the proposal is considered to be a superior planning outcome, despite the FSR variation.

In terms of privacy, the proposed development has been designed to minimise privacy impacts whilst in fact improving privacy for residents within the existing building and surrounding properties. To the side boundary, privacy screening is proposed, which compliment to the contributory item whilst providing visual and acoustic privacy to the subject building, whilst also offering casual surveillance of the streetscape. When considering visual and acoustic privacy against the backdrop of the applicable planning controls, any additional loss of privacy caused by the non-compliant element would be insignificant or nil.

In relation to solar access, the proposed development will not result in any unreasonable loss of solar access or overshadowing. Due to its orientation, the rear extension will cast shadows into the subject site itself and/or of the adjacent street frontages. As represented in the submitted shadow diagrams, the additional overshadowing is considered to be negligible, maintaining significant solar access to the rear yard of No. 3 Toxteth Road, which is entirely

within the solar access controls outlined in the Sydney DCP of 3 hours of solar access to private open space areas at the winter solstice.

With regards to view loss, there are no notable views enjoyed from or across the subject site. As viewed from the site surrounds, the proposed development will maintain the primary building height and will therefore, when considering the degree of view sharing against the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil.

Accordingly, the proposal is consistent with objective (d).

Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R1, and a response as to how the proposal meets the objective is provided as follows:

- ***To provide for the housing needs of the community.***

The proposal will enhance the liveability and useability of the existing dwelling through alterations and additions. The proposal will provide better opportunities to meet the housing needs of the community within a building which will provide a considerably higher level of amenity, liveability and functionality within the residential environment whilst maintaining the heritage character of the locality.

- ***To provide for a variety of housing types and densities***

The improved amenity of the property will provide occupants enhanced liveability, whilst contributing the diversity of housing types and densities in the zone. As of the 2016 census, single detached dwellings made up only 4.9% of dwelling types within Glebe (ABS; 2016).

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

This objective is not applicable.

- ***To maintain the existing land use pattern of predominantly residential uses***

The development will maintain the existing land use pattern of the predominantly residential area. The building façade will retain the historical elements whilst providing a rear extension which is sympathetic to the lined streetscape and building typology of the locality.

8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b)

The second precondition in Clause 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (Clause 4.6(4)(b)). Under Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))

Contravention of the maximum FSR development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))

As detailed in this submission the areas displays a range of building sizes and typologies, a subdivision pattern that varies and the FSR standard is often exceeded, noting that FSR variation examples are provided in this Statement. The proposal will visually appear to be consistent with the character of the area. On this basis, there is no benefit to maintaining the development standard in this instance.

As outlined, there are no unreasonable impacts that will result from the proposed variation to the maximum FSR. As such, there is no public benefit in maintaining strict compliance with the development standard which would result in elements of the heritage contributory building losing character. Whilst the proposed FSR exceeds the maximum permitted on the site by 0.065:1 (26.67m^2), the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. Conclusion

Having regard to all of the above, it is considered that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives, and is within the public interest. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation is worthy of support.