

Attachment B

<p>Clause 4.6 Variation Request Floor Space Ratio</p>
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APPENDIX 1

CLAUSE 4.6 TO CLAUSE 4.4 OF SYDNEY LEP 2011

EXCEPTIONS TO DEVELOPMENT STANDARDS – FSR VARIATION

Demolition of the existing structures on the site and the construction of a multi-dwelling development comprising of 14 x 3-storey townhouses with basement parking and associated strata subdivision

15-17 WILLIAM STREET, ALEXANDRIA

PREPARED BY

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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 demolition of the existing structures on the site and the construction of a multi-dwelling development comprising of 14 x 3-storey townhouses with basement parking at 15-17 William Street, Alexandria.

Clause 4.6 of the Sydney 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, as revised by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130.

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

Clause 4.4 of Sydney LEP 2012 prescribes a FSR of 1:1. Clause 6.14 of the LEP allows or an additional FSR of 0.5:1 for Area 6 where Green Square community infrastructure⁸ is also provided. The proposal includes a Voluntary Planning Agreement, therefore the proposed development is subject to a FSR control of 1.5:1 (GFA: 1,651.5qm).

The proposed development will have a FSR of 1.51:1 (GFA: 1,658sqm), which does not comply with the FSR development standard and represents a variation of 0.4% from the numerical FSR standard in the LEP.

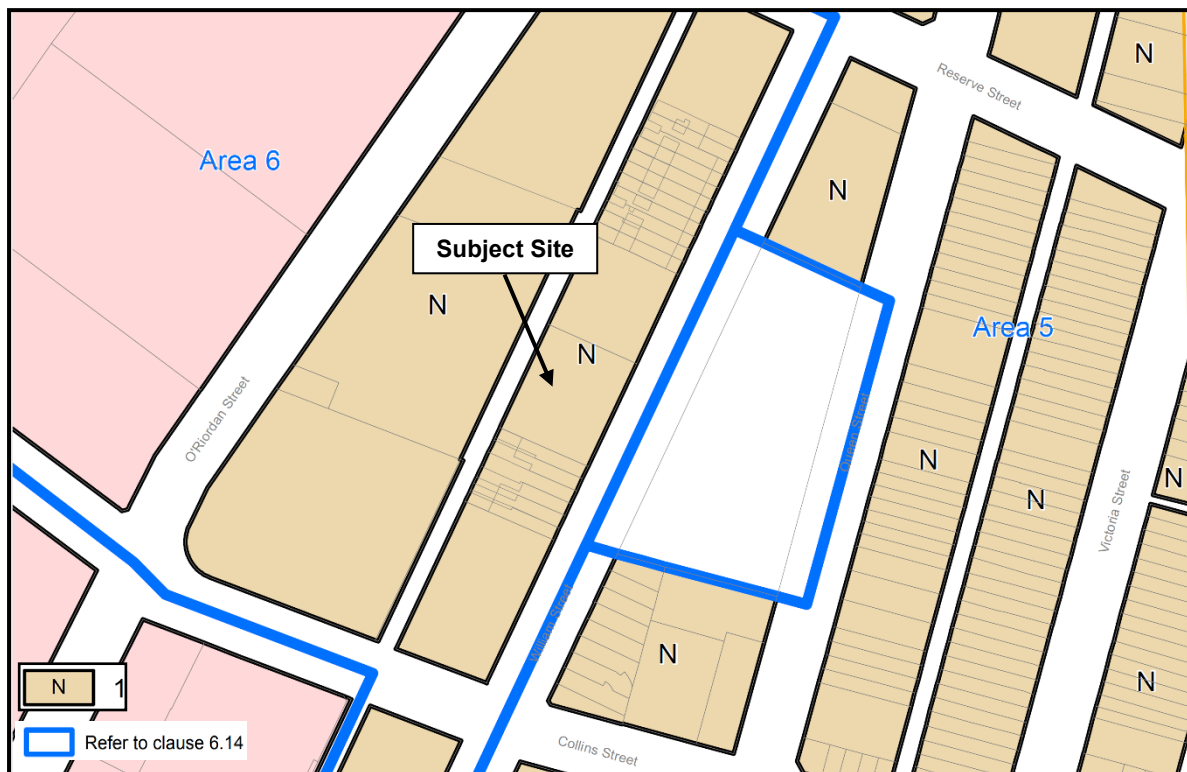


Figure 44: FSR Map

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:

- It is considered that the proposed works represent a desirable and appropriate form of development on the subject site.

⁸ Green Square community infrastructure is defined as "development at Green Square for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), public roads, drainage or flood mitigation works."

- The proposed FSR non-compliance will be indiscernible from William Street, William Lane and the adjoining properties.
- The proposal is designed as two separate building elements with Townhouses 1 to 7 in the western building and Townhouses 8 to 14 in the eastern building. The upper levels of each building are recessed from the levels below. The proposal incorporates a high level of articulation to the eastern and western façades including the provision of openings and terraces. The articulation of the facades and the recessed upper levels will reduce the perceived bulk of the proposed development. Refer to extracts of the East Elevation and West Elevation below.
- The bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application and the table below, the proposed new building will have a height, bulk and scale that is compatible with the adjoining and surrounding 3-storey townhouse and 3- and 4-storey residential flat buildings along this section of William Street.

	DA Number	Development Description	Approved Height	Approved FSR
1-9 William Street	D/2014/1028	4-storey residential flat building (at 1 William Street) and 3-storey townhouses at 3-9 William Street)	14.6m	1.5:1
11-13 William Street	D/2012/1852	3-storey townhouses	Below 15m	1.73:1
15-17 William Street	Subject Proposal	3-storey townhouses	12.4m	1.51:1
19 William Street	D/2013/62	3-storey townhouses and 2 apartments	12.35m	1.25:1
21-27 William Street	D/2015/145/B	3-storey residential flat building	Below 15m (RL 32.95)	1.51:1
6 William Street	D/2012/282	3-storey townhouses	10.4m	1.08:1
29-41 William Street	D/2016/1085/F	3-storey townhouses	13.5m	1.55:1

- The FSR variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal complies with the LEP building height development standard and the DCP 3-storey height limit control.
- The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss.
- As demonstrated on the Solar Access Diagrams submitted with this application, the proposal will not unreasonably overshadow the adjoining townhouse developments to the north and south.
- The FSR variation is well integrated into the high-quality, articulated design of the proposal and ensures that the built form will contribute positively to the locality.

- The proposed density, scale and bulk of the development is appropriate and acceptable given the context of the locality and will not appear out of character when viewed in its context of other buildings in the vicinity.
- The proposed bulk and scale of the development is also compatible with the size and shape of the allotment.
- The proposal includes landscaping at the front and centre of the site on the Ground Floor and First Floor which will soften the built form. The proposal will retain the 3 existing street trees location along the William street frontage Refer to the Landscape Plan prepared by Sticks & Stones submitted with this DA.



Figure 45: Extract of the North and South Elevations demonstrating that the upper levels are recessed from the levels below which reduces the perceived bulk of the proposed development

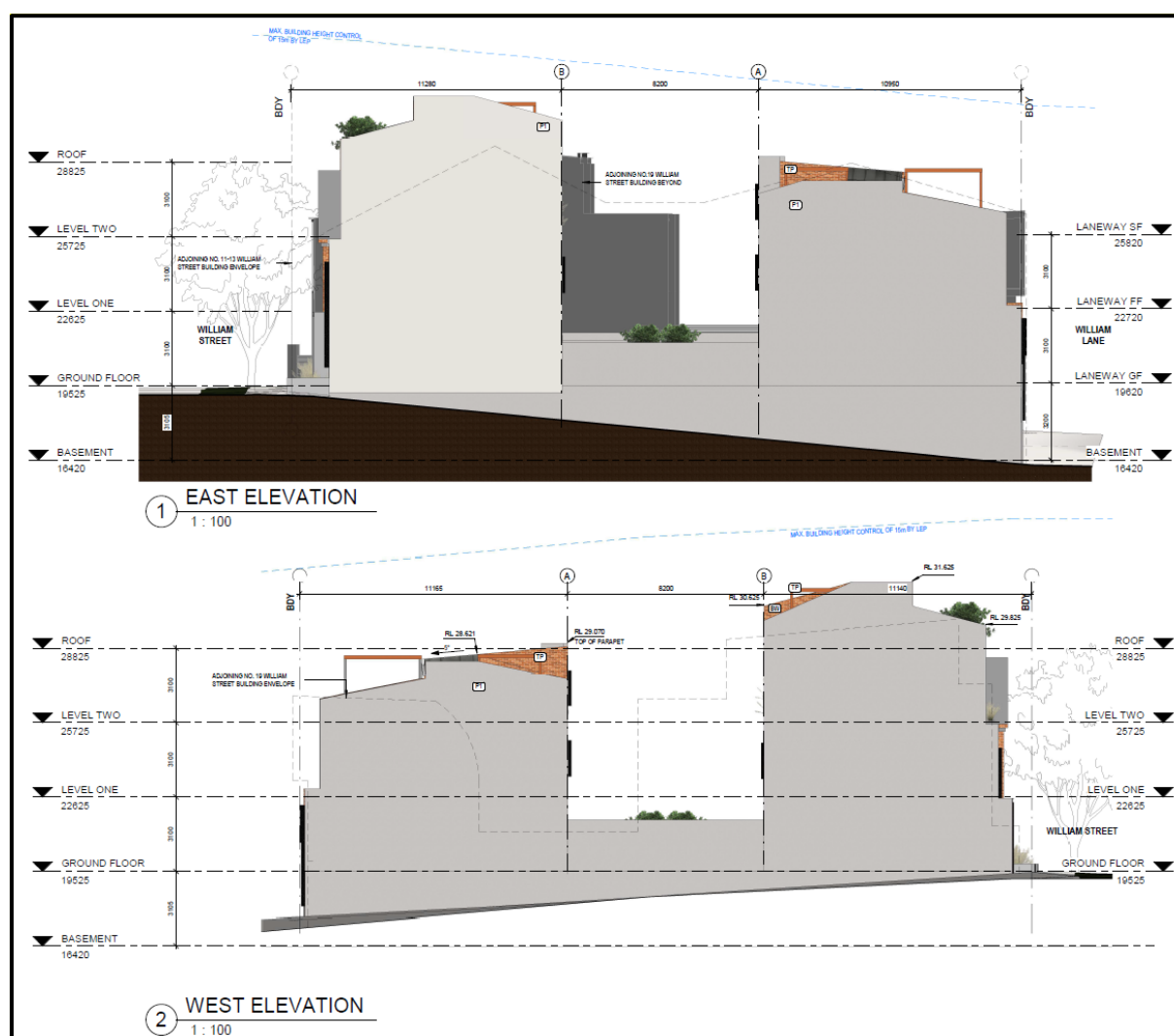


Figure 46: Extract of the East and West Elevations demonstrating that the upper levels are recessed from the levels below which reduces the perceived bulk of the proposed development

- Despite the non-compliance, the proposal achieves the objectives of the development standard and the B4 Mixed Use zone as demonstrated in the following table:

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future.	<p>The proposed works represent a desirable and appropriate form of development on the subject site.</p> <p>The proposal provides sufficient floor space to meet anticipated development needs for the foreseeable future.</p> <p>The bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application and the table above, the proposed new building will have a height, bulk and scale that is compatible with the adjoining and surrounding 3-storey townhouse and 3- and 4-storey residential flat buildings along this section of William Street.</p>

<p><i>(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic</i></p>	<p>As demonstrated in the architectural plans submitted with this application, the proposed development will have a height, bulk and scale that is compatible with the 3-storey townhouse developments to the north of the subject site at 11-13 William Street and 3-9 William Street; the 4-storey residential flat building to the north of the subject site at 1 William Street; the 3-storey townhouse development to the south of the subject site at 19 William Street; the 3-storey residential flat building to the south of the subject site at 21-27 William Street; and the 3-storey townhouse development opposite the subject site to the southeast at 6 William Street.</p> <p>The proposal is designed as two separate building elements with Townhouses 1 to 7 in the western building and Townhouses 8 to 14 in the eastern building. The upper levels of each building are recessed from the levels below. The proposal incorporates a high level of articulation to the eastern and western façades including the provision of openings and terraces. The articulation of the facades and the recessed upper levels will reduce the perceived bulk of the proposed development. Refer to extracts of the East Elevation and West Elevation above.</p> <p>As demonstrated in the SEE, the proposal complies with the LEP and DCP parking rates.</p>
<p><i>(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure</i></p>	<p>The proposed development is commensurate with the capacity of existing and planned infrastructure. The minor nature of the variation would not generate any inconsistency with this objective.</p>
<p><i>(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.</i></p>	<p>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.</p> <p>It is noted that the proposal complies with the DCP 3-storey height limit control.</p> <p>The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss.</p> <p>As mentioned above, the proposed development will have a height, bulk and scale that is compatible with the 3-storey townhouse developments to the north of the subject site at 11-13 William Street and 3-9 William Street; the 4-storey residential flat building to the north of the subject site at 1 William Street; the 3-storey townhouse development to the south of the subject site at 19 William Street; the 3-storey residential flat building to the south of the subject site at 21-27 William Street; and the 3-storey townhouse development opposite the subject site to the southeast at 6 William Street.</p>

Consistency with the objectives of the B4 Mixed Use zone	
Objectives	Assessment
<ul style="list-style-type: none"> To provide a mixture of compatible land uses. 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. To ensure uses support the viability of centres. 	<p>It is considered that the proposed works represent a desirable and appropriate form of development on the subject site.</p> <p>As demonstrated in the architectural plans submitted with this application, the proposed development will have a height, bulk and scale that is compatible with the 3-storey townhouse developments to the north of the subject site at 11-13 William Street and 3-9 William Street; the 4-storey residential flat building to the north of the subject site at 1 William Street; the 3-storey townhouse development to the south of the subject site at 19 William Street; the 3-storey residential flat building to the south of the subject site at 21-27 William Street; and the 3-storey townhouse development opposite the subject site to the southeast at 6 William Street.</p> <p>The proposal will contribute to a mixture of land uses in the area and support the viability of the area. The proposed development is suitably located in an area close to bus services and Green Square railway station.</p> <p>The proposal is therefore considered to satisfy the zone objectives.</p> <p>The proposed FSR variation is therefore not considered to generate any inconsistency with the zone objectives.</p>

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard 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 proposed FSR non-compliance will be indiscernible from William Street, William Lane and the adjoining properties.
- The proposal is designed as two separate building elements with Townhouses 1 to 7 in the western building and Townhouses 8 to 14 in the eastern building. The upper levels of each building are recessed from the levels below. The proposal incorporates a high level of articulation to the eastern and western façades including the provision of openings and terraces. The articulation of the facades and the recessed upper levels will reduce the perceived bulk of the proposed development. Refer to extracts of the East Elevation and West Elevation above.
- The bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application and the table above, the proposed new building will have a height, bulk and scale that is compatible with the adjoining and surrounding 3-storey townhouse and 3- and 4-storey residential flat buildings along this section of William Street.

- The FSR variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal complies with the LEP building height development standard and the DCP 3-storey height limit control.
- The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss.
- As demonstrated on the Solar Access Diagrams submitted with this application, the proposal will not unreasonably overshadow the adjoining townhouse developments to the north and south.
- The FSR variation is well integrated into the high-quality, articulated design of the proposal and ensures that the built form will contribute positively to the locality.
- The proposed density, scale and bulk of the development is appropriate and acceptable given the context of the locality and will not appear out of character when viewed in its context of other buildings in the vicinity.
- The proposed bulk and scale of the development is also compatible with the size and shape of the allotment.
- The proposal includes landscaping at the front and centre of the site on the Ground Floor and First Floor which will soften the built form. The proposal will retain the 3 existing street trees location along the William street frontage Refer to the Landscape Plan prepared by Sticks & Stones submitted with this DA.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning.

Based on the above points, 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.

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 15-17 William Street, Alexandria and is requested to be looked upon favourably by the consent authority.