

Attachment D

Clause 4.6 Request – Floor Space Ratio



Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.4 - Floor Space Ratio

Address: 26-28 Rainford Street, Surry Hills

Proposal: Alterations and additions to the existing dwelling

Date: 12 October 2021

1.0 Introduction

This is a written request to seek an exception to a development standard under Clause 4.6 – Exceptions to Development Standards of Sydney Local Environmental Plan (SLEP) 2012. The development standard for which the variation is sought is Clause 4.4 Floor Space Ratio under SLEP 2012.

The following sections of this written request demonstrate that the proposed development addresses the principles identified in the above judgements.

2.0 Description of the planning instrument, development standard and proposed variation

2.1 *What is the name of the environmental planning instrument that applies to the land?*

The Sydney Local Environmental Plan (SLEP) 2012.

2.2 *What is the zoning of the land?*

The zoning of the land is R1 General Residential under the SLEP 2012.

2.3 *What are the Objectives of the zone?*

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing land use pattern of predominantly residential uses.*

2.4 *What is the development standard being varied?*

The development standard being varied is the floor space ratio development standard.

2.5 *Is the development standard a performance based control?*

No, the floor space ratio development standard is a numerical control.

2.6 Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.4 of SLEP 2012.

2.7 What are the objectives of the development standard?

The objectives of Clause 4.4 are as follows:

- “(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.”

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.4 establishes a maximum floor space ratio (FSR) of 1.75:1 for the site as illustrated in the extract of the Floor Space Ratio Map included in Figure 1 below.

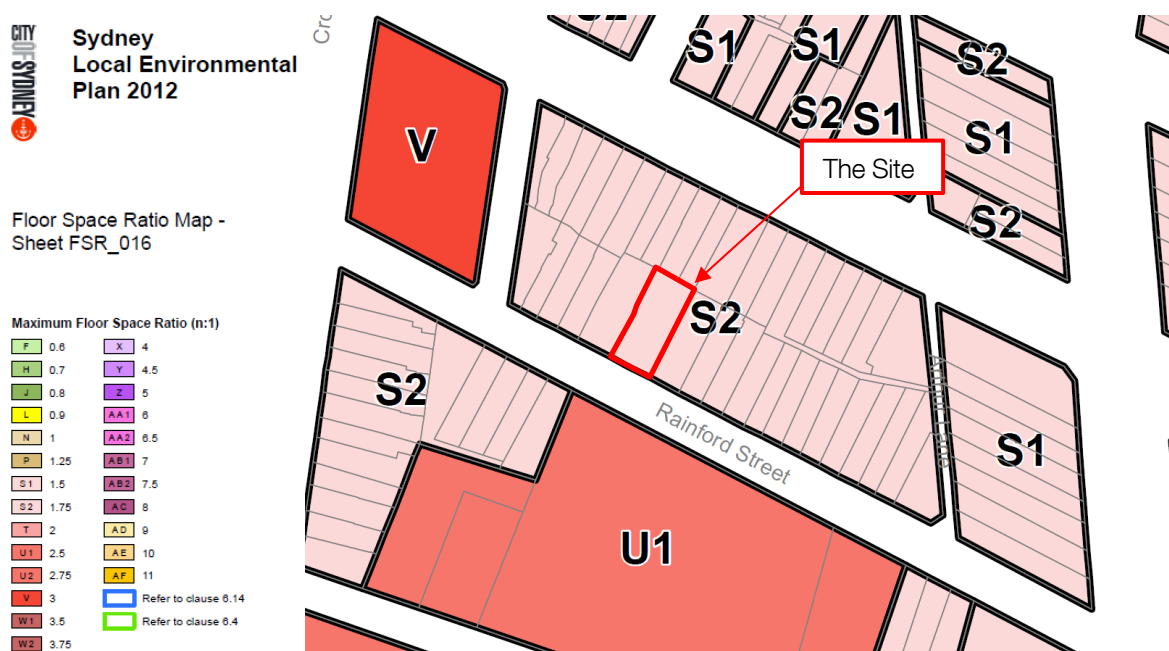


Figure 1: Extract from SLEP 2012 Floor Space Ratio Map

2.9 What is the proposed FSR in the development application and what is the percentage variation (between the proposal and the environmental planning instrument)?

The application proposes a gross floor area (GFA) of 321.3m², which equates to a FSR of 1.85:1. This is less than the current approved FSR of 1.94:1.

Table 1 illustrates the proposed numeric breaches and the percentage of variation to the development standards. This includes details of the existing approved FSR for comparison.

Control	Proposed FSR	Compliance	Variation	% Variation
1.75:1	1.85:1 (321.3m ²) (existing/approved 1.94:1 – 335.9m ²)	No	0.10:1 (existing 0.19:1)	9.0% (existing 10.8%)

Table 1: Description of the variations to the FSR standard

3.0 Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) 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.”*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- “(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.”*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- “(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.”*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- “(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning;*
- (b) the public benefit of maintaining the development standard; and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* ('Four2Five No 1');
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* ('Four2Five No 2');
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248* ('Four2Five No 3');
- *Micaul Holdings Pty Limited v Randwick City Council (2015) NSWLEC 1386*;
- *Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC7*;
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*;
- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130*;
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61*; and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*.

3.2 Clause 4.6(3)(a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the FSR standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The proposal is consistent with the objectives of the Floor Space Ratio standard and the objectives of the R1 General Residential as outlined in section 3.4 below.
- The existing building, incorporating the garage recently approved under DA No. D/2020/1148, which is currently under construction, has an FSR of 1.94:1, which exceeds the standard by 10.8%. The proposal has an FSR of 1.85:1, which equates to a variation of 9% and a reduction in the existing variation.
- The variation to the standard does not contribute to unreasonable impacts in terms of overshadowing, privacy, visual impacts or view loss to adjoining or surrounding properties.
- The variation to the FSR standard does not result in an increase in the intensity of the development or generate additional traffic or parking demand. The proposal maintains the existing single dwelling while enhancing the amenity of the occupants.
- The proposed development is generally compliant with the controls, or the intent of the controls, contained in the SDCP 2012, including the locality statement for the Surry Hills Central locality, within which the site is located.
- The scale of the proposed development is consistent with the desired scale of the surrounding development and streetscape. The proposal maintains the two storey scale to Rainford Street and the rear of the site. While the proposal enlarges the floorplate of the third (uppermost) storey, it sits below the ridge height of the existing storey and is setback from the front and rear parapet and is a receding form. This ensures the third storey will continue to be largely indiscernible when viewed from Rainford Street.
- The proposal does not have any adverse impacts on the heritage significance of the heritage conservation area. As outlined in the Heritage Impact Statement (HIS) prepared by John Oultram Heritage & Design, the proposal is for alterations and minor additions to an existing building of very minor heritage significance and the heritage impacts will be nil or minor. The works will have a limited and acceptable impact on the surrounding streetscape and little impact on the conservation area and are consistent with the heritage provisions of the DCP 2012.

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

Not contested. The underlying objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

It cannot be said that the FSR development standard has been abandoned, however it is noted that the existing approved development currently exceeds the FSR development standard.

3.2.4 Is the zoning of the land unreasonable or inappropriate?

Not contested. The zoning of the land is appropriate for the site.

3.3 *Clause 4.6(3)(b) requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard*

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard as outlined below.

Existing and approved development

The existing building, incorporating the garage recently approved under DA No. D/2020/1148, which is currently under construction, has a gross floor area (GFA) of 335.9m², which equates to an FSR of 1.94:1 and a 10.8% variation to the standard of 1.75:1.

The proposal has a gross floor area of 321.3m², which equates to an FSR of 1.85:1 and a 9% variation to the standard. The proposal reduces the FSR by 0.09:1, which equates to a 4.6% reduction in FSR.

It is noted that the floor plate of the third storey has been increased to accommodate a master bedroom, ensuite and storage to enhance the functionality of the dwelling. The increase in the floor area of the third storey has been off-set by a reduction in GFA across the other levels of the building through the introduction of a deep soil courtyard, terraces, voids and a new central stairwell and lift. Importantly, these alterations significantly enhance the overall amenity of the dwelling, without having a significant impact on the amenity of adjoining or surrounding properties.

Despite the increase in the size of the third storey, the scale of the building continues to be commensurate with the scale of the existing development on site and is consistent with diverse character and form of buildings along Rainford Street. The ridge of replacement third storey sits below the ridge height of the existing roof and is also setback behind the front and rear parapet. The roof plane has been steeply angled away from the Rainford Street which the higher parts of the roof are setback some 5m from the parapet. The mansard roof form minimises the bulk and intrusion to the adjoining properties and from street level. The approach to the siting, height and design of the addition has sought to minimise its visual impact on Rainford Street, surrounding street and adjacent properties. Consequently, additional floor area within the third storey is immaterial in terms of increasing the bulk and scale of the building when viewed from Rainford Street.

3.4 *Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?*

3.4.1 Objectives of the Floor Space Ratio standard

The proposal remains consistent with the objectives of the FSR standard outlined in Clause 4.4 despite the non-compliance, as demonstrated below:

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

The proposal reduces the FSR from 1.94:1 to 1.85:1. The floor plate of the third storey has been increased to accommodate a master bedroom, ensuite and storage. This increase has been off-set by the reduction in GFA across the other levels through the introduction of a deep soil courtyard, terraces, voids and new central stairwell and lift, all of which enhance the overall amenity of the dwelling.

“(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 reduces the FSR of the existing dwelling and does not increase the density or intensity of development on site or generate additional traffic. While the footprint and envelope of the third storey has been increased, it sits below the existing ridge height and has been designed and sited to minimise visibility from Rainford Street and surrounds.

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

The proposal does not change the land use on site and maintains the existing single dwelling. Furthermore, the proposal does not increase the GFA or FSR of the dwelling. In this regard, the proposal does not increase the intensity of the development on site, which is commensurate with the capacity of 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.”

The site is located with the Surry Hills Central locality as identified in the SDCP 2012. The statement for this specific locality states it is to *“maintain the transition in scale and use, from large footprint warehouse buildings in the west to small lot retail, shop-top and terrace houses in the east.”*

The proposal maintains the two storey scale to Rainford Street and the rear of the site. While the proposal enlarges the floorplate of the third (uppermost) storey, it sits below the ridge height of the existing storey and is setback from the front and rear parapet and is a receding form, to minimise the visibility from Rainford Street and public vantage points. The proposal responds to the lower scale of development that characterises Rainford Street. On this basis the proposal reinforces existing transitions in scale and is consistent with the character of locality as articulated in the locality statement. At the same time the proposal does not adverse heritage impacts on the conservation area or adverse amenity impacts on adjacent properties by way of overshadowing or loss of privacy.

3.4.2 Objectives of the zone

The objectives of the R1 General Residential zone are addressed as follows:

“To provide for the housing needs of the community.”

The proposed alterations and additions will continue to facilitate the use of the building for residential purposes and will significantly improve the amenity of the building for residential use through the provision of a courtyard, terrace and additional amenities.

“To provide for a variety of housing types and densities.”

The proposal contributes to the variety of housing types within Surry Hills and the wider Sydney LGA.

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

The proposal does not inhibit any existing or future land uses intended to meet the day to day needs of residents. The proposed development will provide valuable residential accommodation in close proximity to a range of facilities and services.

"To maintain the existing land use pattern of predominantly residential uses."

The proposal maintains the existing residential use on site.

3.5 Whether contravention of the development standard raises any matter of significance for the State or regional environmental planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

3.6 Is there public benefit in maintaining the development standard?

Generally speaking, there is a public benefit in maintaining standards. However, there is public benefit in maintaining a degree of flexibility in specific circumstances. For reasons outlined in Section 3.2, 3.3 and 3.4 in the specific circumstances of this case, there is no public benefit in maintaining the development standard.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

The proposed development will satisfy the R1 zone objectives and the objectives of Clause 4.4 Floor Space Ratio standard and does not hinder the attainment of the objects specified with Section 1.3(a), (b), and (c) of the Act.

4.0 Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the Floor Space Ratio standard.

The proposal reduces the FSR from the existing dwelling as approved under DA No. D/2020/1148.

The proposal accords with the stated objectives for the R1 Residential zone and Clause 4.4 Floor Space Ratio development standard. The proposal maintains a bulk and scale that is consistent with the existing development on site and will not result in discernible change to the streetscape of Rainford Street or the character of the conservation area. Nor does the proposal contribute to any adverse streetscape, heritage, or amenity impacts.

The variation to the FSR standard is considered to be minor and does not increase the intensity of the development on site as it maintains the existing single dwelling. Consequently, the proposal does not contribute to increased traffic, parking or environmental impacts.

A development strictly complying with the numerical standard would not discernibly alter the overall scale of the building or improve the amenity of surrounding development or public domain.

As demonstrated in this submission, it would be unreasonable for strict compliance with the FSR standard to be enforced. It is concluded that the variation to the FSR development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case.