

Attachment E

<p>Clause 4.6 Variation Request – Floor Space Ratio</p>
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7 Franklyn Street & 49-51 Greek Street, Glebe – FSR

Clause 4.6 Variation Statement – February 2022



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INTRODUCTION

Overview

This Clause 4.6 Variation request has been prepared pursuant to Clause 4.6 of Sydney Local Environmental Plan 2012 (**SLEP 2012**) in support of the development application for the new mixed boarding house accommodation at 7 Franklyn Street & 49-51 Greek Street, Glebe (**the site**).

This Clause 4.6 Variation has been submitted in conjunction with the Statement of Environmental Effects (SEE) that assessed the proposed works as described above. The request for variation of the development standard has been prepared in accordance with the requirements of Clause 4.6 of the Sydney LEP 2012 (SLEP 2012) which has the following aims and objectives:

- 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.*

The proposed variations to development standards for the proposed development are in relation to Clause 4.4 Floor Space Ratio of the SLEP 2012. In summary the following variations are proposed:

Sydney LEP 2012 Clause	SLEP 2012 Development Standard	Proposed Development Non-Compliance	% of Variation
Clause 4.4 Floor Space Ratio	Maximum 2.5: + Bonus 0.5: under SEPP ARH	3.1:1	3.33%

In accordance with Clause 4.6 of the SLEP 2012 Council is required to consider the following:

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.*

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.

This variation request demonstrates that:

- The variation to the development standard is in the public interest because it is consistent with the objectives for the zone and the development standard itself.
- Compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.

RELEVANT ASSESSMENT FRAMEWORK

This section of the report outlines the environmental planning instruments relevant to the proposed development, including the aims and objectives, maximum floor space ratio control and the assessment framework for seeking a variation to a development standard.

Some relevant planning principles and judgements issued by the Land and Environment Court regarding the assessment of developments seeking exceptions to development standards are also provided.

Sydney Local Environmental Plan 2012

Clause 4.6 of SLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

(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 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would satisfy the requirements of clause 4.6.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- There are sufficient environmental planning grounds to justify contravening the development standard.

Furthermore, the Consent Authority must be satisfied that 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, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
2. The public benefit of maintaining the development standard, and
3. Any other matters required to be taken into consideration by the Secretary before granting concurrence.

[Note: Concurrence is to be assumed as per the applicable planning circular, discussed further below.]

This document forms a Clause 4.6 written request to justify the contravention of the Floor Space Ratio development standard in Clause 4.4. Also forming part of this request are the architectural drawings that have been submitted in connection with the amended development application. The assessment of the proposed variations has been undertaken in accordance with the requirements of the SLEP 2012, Clause 4.6 Exceptions to Development Standards.

NSW Land and Environment Court: Case Law (Tests)

The following sections of the report provide an assessment of the request to vary the development standards relating to the maximum floor space ratio in accordance with Clause 4.6 of SLEP 2012. Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgement is the most relevant of recent case law. Justice Preston confirmed (in this judgement):
 - The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

- On the grounds for a finding that the strict application of a standard is 'unreasonable or unnecessary' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

- That, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:

"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" [26]

- That 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:

"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 will have a better environmental planning outcome than a development that complies with the development standard." [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

THE EXTENT OF VARIATION

Relevant Development Standards

The development standards being requested to be varied are Clause 4.4 Floor Space Ratio of the SLEP 2012.

1.1 The FSR Standard

Clause 4.4 of the SLEP 2012 states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The Floor Space Ratio Map sets a FSR standard of 2.5:1 for the site and the *State Environmental Planning Policy – Affordable Rental Housing* gives provision of a bonus 0.5:1 for boarding housing. The Floor Space Ratio has been measured in accordance with the SLEP 2012 Gross Floor Area definition:

gross floor area means 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.

Due to the sloping topography of the site, only part of the lower ground level is defined as a “basement”. Specifically, the western part of the lower ground level is located below ground level (existing) and could be defined as a basement, with the eastern part of the lower ground level located predominantly above ground level (existing). As such, the garbage room, bulk storage room, laundry and corridors within the eastern extent of the lower ground level are calculated as GFA.

1.2 Proposed Variation to Standards

The proposed variations to development standards for the proposed development are in relation to Clause 4.4 Floor Space Ratio of the SLEP 2012. In summary the following variations to development standards are proposed:

Sydney LEP 2012 Clause	SLEP 2012 Development Standard	Proposed Development Non-Compliance	% of Variation
Clause 4.4 Floor Space Ratio	Maximum 2.5: + Bonus 0.5: under SEPP ARH	3.1:1	3.33%

CLAUSE 4.6(4)(A)(II) – WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT?

2. Overview

The proposed development will be in the public interest because it is consistent with the objectives of the Floor Space Ratio control standard and the zone objectives.

2.1 The Proposal Achieves the Objectives of the Floor Space Ratio Standard


The objectives of the Floor Space Ratio control as listed within Clause 4.4 of the SLEP 2012 have been achieved as demonstrated below.

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*

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
 - The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
 - The proposal will provide for sufficient floor space to provide for low cost housing in the area where there is demonstrated demand given the proximity of the site to major educational institutions.
 - The proposed variation will not affect the overall height, scale or bulk of the development. The proposed floor space non-compliance has come about by way of having to include part of the lower ground floor area in gross floor area calculations due to the sloping topography of the site, as only part of the lower ground level is defined as a “basement”. Given the minor non-compliance largely relates to having to include additional internal floor area which adds no bulk or scale to the proposal, strict application of the FSR control would be unreasonable in the circumstances.
 - As outlined above, a large proportion of the areas that are calculated as GFA at basement level are due to the topography of the site which falls from east to west. These areas include the garbage room 2, corridors, bulk storage room, communal laundry which would typically be excluded as GFA if they were contained within a basement, hence a contributing factor for such a non-compliance. These service



areas are critical to the overall functionality of the boarding house, and cannot be omitted from the proposal otherwise the amenity of future occupiers will be compromised.

- Whilst the proposed garbage areas at basement level contribute to the overall GFA non-compliance by virtue of being calculated as gross floor area, there is really no other location within the proposed building that would offer the level access to the street for collection arrangements.

The two garbage rooms provided are also the requirement of the development where they need to be within 30m of each boarding room entry door. Hence, they are within those distances. Garbage room 1 relates to a garbage chute on each floor with garbage room 2 can be only used for bin storage and for collection day as this is the only access, the proposal can have for street collection due to the slope the site on Greek Street from south western to south eastern side.

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


- The majority of boarding rooms will be occupied by students of the numerous nearby educational institutions (Sydney University, University of Technology, TAFE College etc). These students do not normally own a car and any visitors travelling by car will be able to park in the large adjacent public car park. Any occasional other parking need (e.g. service personnel, delivery) will be satisfied by the available on-street parking in the area or the public parking provided in the adjacent Broadway Shopping.
- The scale and massing of the proposal and intensity of land use will be consistent with other types of development in the area and will not impact on significant volumes of vehicle and pedestrian traffic.

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

- There is no perceived benefit of retaining the existing building and not converting it to a boarding house use, versus the proposed increase of overall gross floor area as a result of the proposal. Whilst the former use of the building for commercial purposes would also attract a good level of patronage, the proposed new boarding house use and commercial tenancies are not likely to place significant additional demand on existing and planned infrastructure.
- Whilst utilisation of the existing building envelope would result in the provision of lesser boarding house rooms, it would compromise the delivery of low cost accommodation within Sydney for which there is a demonstrated demand. Therefore, it is inevitable that a potential increase in demand on existing and planned infrastructure to ensure that the demand for this type of residential accommodation is met.
- Should the proposal seek to maintain a compliant gross floor area, there would be very limited decrease in the number of boarding rooms provided to the site. Despite this the proposal is subject to City of Sydney Development Contribution Plan which would allocate contributions to improved links to public transport and associated infrastructure, the close proximity to the site to Broadway and Central Station will all contribute to minimising increased demand on the infrastructure network.

(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


- 'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of



the LEP that form the urban character and built form of the area. The B2 zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The proposal will contribute to the eclectic mix of permissible uses in the B2 zone.

As per the Court judgment of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, we are of the view the desired future character should be informed by the nearby and future development and not limited by development standard. As the gross floor area that should be included in the floor space calculations is well below the maximum building height and similar in scale to other existing buildings in the locality, the proposal will appear contextually compatible within the streetscape.

- The proposed corridors, bulk storage room, garbage room, and laundry which would typically be excluded as GFA if they were contained within a basement, do not add to the overall bulk and scale of the development and do not compromise the desired future character of the area. These service areas do not compromise the amenity of surrounding occupiers by being visually intrusive, and do not result in additional noise and disturbance as they're contained within the building envelope. No loss of privacy or outlook of neighbouring occupiers will occur. The slight additional GFA provides significant opportunity for increased amenity to the occupants through provision of additional shared services. The proposal also provides a separate pedestrian access from Greek Street, which is different to the Motorcycle access/egress to enhance a more functional space of the proposed lower ground level. This has also been requested by Council.
- The alternative to locating the service areas at lower ground level would be to locate boarding rooms or communal recreational areas at lower ground level, which result in a poor outcome in terms of amenity for boarding house occupiers and result in boarding rooms that would lack natural light and ventilation with a minimal outlook. Accordingly, the proposal meets the FSR standard's objectives by reasonably preserving neighbours' amenity and appearing compatible within the streetscape.
- The development of the additional floors and bulk to the buildings as a whole is intended to fit comfortably within the existing streetscape in terms of scale and function. The proposed design of the additions to the buildings will positively complement the existing character of the area.
- Whilst the proposal results in a minor non compliance in terms of height of building, lift shaft and plant, pergola and fire stair that exceed the height limit by 2.7m do not constitute gross floor area, and therefore there is no-correlation between the proposed building height non-compliance and gross floor area non compliance and therefore the proposed variations are not linked. As discussed previously, the bulk of additional FSR has come about by virtue of the proposed corridors, bulk storage room, garbage room, and communal laundry which would typically be excluded as GFA if they were contained within a basement.
- All floor space is located within a largely compliant envelope and a lower FSR would not necessarily reduce the density or external envelope. Given the proposal's compatibility with surrounding developments' bulk and scale, the correlation between height and density is considered appropriate.
- The proposed additional bulk and scale will not create any significant increase in levels of enclosure to surrounding buildings, and appropriate setbacks and separation is provided.
- The proposed design of the development achieves an appropriate built form in that it enhances the public domain, character of the streetscape, including views along with providing improved internal amenity and outlook.

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- The form of the new development ensures that the proposed building envelope does not dominate the setting of the site or surrounds, and remains subservient to other more significant developments within the locality.
 - The proposed massing of the development is considered acceptable with regard to the FSR controls and intent for the locality as discussed previously and results in a better outcome in the provision of visitor accommodation.
 - The provision of a mix of façade treatments to the additions contribute to minimising the visual perception of bulk and scale of the building.

2.2 The Proposal Achieves the Objectives of the Zone

The site is currently zoned B2 Local Centre Zone under the Sydney LEP 2012.

The proposed new development is consistent with the B2 zone objectives in that:

To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

- The Site will provide boarding house accommodation which is well serviced by retail, business and community uses in the surrounding area.

To encourage employment opportunities in accessible locations.

- The Site use will not necessarily encourage employment opportunities, with the exception of the Managers role.

To maximise public transport patronage and encourage walking and cycling.

- The Site's has excellent accessibility to public transport options (including frequent bus services, the existing Central Train Station accessible by pedestrian and bus connection) and access to services, education and employment.
- The provision of 101 bicycle spaces will promote cycling.

To allow appropriate residential uses so as to support the vitality of local centres.

- Housing diversity is an issue faced within the Sydney LGA and the proposed development will have a positive social and economic impact by providing low-cost accommodation with excellent access to public transport, retail, education, hospitals and Sydney CBD at a reasonable price point.

CLAUSE 4.6(3)A – COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Compliance with the development standard **is** unreasonable or unnecessary in the circumstances of the case.

Clause 4.6(3)(a) requires that this Variation Request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Such compliance is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *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.***
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that 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. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*


In applying the tests of **Wehbe v Pittwater Council** [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 2.1 and 2.2, the proposed development is consistent with the underlying objectives of the standard for Floor Space Ratio and the B2 zone of SLEP 2012.

As addressed previously the proposal has demonstrated compliance with the relevant objectives of Clause 4.4 of the Sydney LEP 2012.

Undermining objectives of the EP&A Act

Section 1.3(g) of the Environmental Planning and Assessment Act 1979 (the EP&A Act) says that it is an objective of the legislation:

to promote the orderly and economic use and development of land



Requiring strict compliance with the FSR control would undermine the achievement of this objective of the legislation. This is because orderly and economic use and development of land is encouraged/supported by permitting development in accordance with the relevant development standards.

This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.

Disproportionate burden on the community

The severity of the burden placed on members of the community (by requiring strict compliance) would be disproportionate to the consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at [15])).

The adverse consequences by requiring strict compliance have already been outlined. In brief terms, they are:

- an unnecessary reduction in housing supply and housing choice.

It is unreasonable to expect the community to bear these adverse consequences in circumstances where there are no significant adverse impacts from allowing the FSR contravention.

This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.

CLAUSE 4.6(3)(B) – ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The proposed development demonstrates that there are sufficient environmental planning grounds in support of the contravention for the following reasons:

- There are sufficient environmental planning grounds to justify the FSR non-compliance, especially as all floor space is accommodated below the maximum building heights, with compliant setbacks and more than compliant open space and landscaping.
- The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
- The proposal will provide for sufficient floor space to provide for low cost housing in the area where there is demonstrated demand given the proximity of the site to major educational institutions.
- The proposed variation will not affect the overall height, scale or bulk of the development. The proposed floor space non-compliance has come about by way of having to include part of the lower ground floor area in gross floor area calculations due to the severely sloping topography of the site, as only part of the lower ground level is defined as a “basement”. Given the minor non-compliance largely relates to having to include additional internal floor area which adds no bulk or scale to the proposal, strict application of the FSR control would be unreasonable in the circumstances.
- As outlined above, a large proportion of the areas that are calculated as GFA at basement level are due to the topography of the site which falls sharply from east to west. These areas include the garbage room 2, corridors, bulk storage room, and communal laundry which would typically be excluded as GFA if they were contained within a basement, hence a contributing factor for such a non-compliance. These service areas are critical to the overall functionality of the boarding house, and cannot be omitted from the proposal otherwise the amenity of future occupiers will be compromised.
- Whilst the proposed garbage areas at basement level contribute to the overall GFA non-compliance by virtue of being calculated as gross floor area, there is really no other location within the proposed building that would offer the level access to the street for collection arrangements.
- The main grounds for contravening the standard are that the proposed corridors, bulk storage room, garbage room 2, and communal laundry which would typically be excluded as GFA if they were contained within a basement are included as gross floor area. These service areas do not add to the overall bulk and scale of the development and do not compromise the desired future character of the area. These service areas do not compromise the amenity of surrounding occupiers by visually intrusive, and do not result in additional noise and disturbance as they’re contained within the building envelope. No loss of privacy or outlook of neighbouring occupiers will occur. If these service areas were excluded as GFA in a basement, then a compliant proposal would be achieved.
- The alternative to locating the service areas at lower ground level would be to locate boarding rooms or communal recreational areas at lower ground level, which result in a poor outcome in terms of amenity for boarding house occupiers and result in boarding rooms that would lack natural light and ventilation with a minimal outlook. Accordingly, the proposal meets the FSR standard’s objectives by reasonably preserving neighbours’ amenity and appearing compatible within the streetscape. It should be noted that the initial proposal submitted to Council had 5 boarding rooms at Lower Ground level, however this was modified to reflect feedback from the Council’s Design Review Panel.

- The Greek Street building height follows the topography of the site which falls steeply from south western side to south eastern side. On Greek Street the proposed building height at SE boundary is higher than neighbouring building as the hill is going up towards the western side.
- The development of the additional floors and bulk to the buildings as a whole is intended to fit comfortably within the existing streetscape in terms of scale and function. The proposed design of the additions to the buildings will positively complement the existing character of the area.
- As per the Court judgment of SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, we are of the view the desired future character should be informed by the nearby and future development and not limited by development standard. As the gross floor area that should be included in the floor space calculations is well below the maximum building height and similar in scale to other existing buildings in the locality, the proposal will appear contextually compatible within the streetscape.
- Whilst the proposal results in a minor non compliance in terms of height of building, lift shaft and plant, pergola and fire stair that exceed the height limit by 2.7m are not visible from the public domain would not constitute gross floor area, and therefore there is no-correlation between the proposed building height non-compliance and gross floor area non compliance and therefore the proposed variations are not linked. As discussed previously, the bulk of additional FSR has come about by virtue of the proposed corridors, bulk storage room, garbage room 2 room, and laundry which would typically be excluded as GFA if they were contained within a basement.
- The proposed additional bulk and scale will not create any significant increase in levels of enclosure to surrounding buildings, and appropriate setbacks and separation is provided.
- The proposed design of the development achieves an appropriate built form in that it enhances the public domain, character of the streetscape, including views along with providing improved internal amenity and outlook.
- The form of the new development ensures that the proposed building envelope does not dominate the setting of the site or surrounds, and remains subservient to other more significant developments within the locality.
- In light of the proposals contribution to achieving the desired future character of the area, a reduction of gross floor area would serve no material planning purpose, other than numerical compliance with a generic Council control.
- The proposal will add to delivering a mix of well-designed low cost housing that meets the needs of Sydney's growing population and to meet the changing population needs.
- The proposed development will not significantly impact on the amenity of adjoining occupiers.
- The proposal results in the delivery of residential accommodation within easy access of the public transport, retail, employment and services.
- The only way to reduce gross floor area/FSR at the lower ground floor level is by reducing the communal area at the lower ground level as the proposal provides more than the minimum required but this change would not affect the height or mass of the building, but only result in a reduction of the amenity for residents which is not in the public interest.



CLAUSE 4.6(5)(A) – WOULD NON-COMPLIANCE RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The proposed non-compliance with the maximum floor space ratio development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

CLAUSE 4.6(5)(B) – IS THERE A PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD?

Overall, it is considered that the strict maintenance of the standard in this instance is not in the public interest as the current proposal will result in the delivery of a high-quality residential development and housing stock which achieves the strategic objectives of Council.

CLAUSE 4.6(5)(C) – ARE THERE ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE SECRETARY BEFORE GRANTING CONCURRENCE?

The Planning Circular PS 18-003, issued on 21 February 2018 (Planning Circular), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The NSLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council.



CONCLUSION

It is requested that council supports the proposed variation to Clause 4.4 of the SLEP 2012 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- The proposed variation will not affect the overall height, scale or bulk of the development. The proposed floor space non-compliance has come about by way of having to include part of the lower ground floor area in gross floor area calculations due to the severely sloping topography of the site, as only part of the lower ground level is strictly defined as a “basement”. Given the minor non-compliance largely relates to having to include additional internal floor area which adds no bulk or scale to the proposal, strict application of the FSR control would be unreasonable in the circumstances.
- The main grounds for contravening the standard are that the proposed corridors, bulk storage room, garbage room 2, and communal laundry which would typically be excluded as GFA if they were contained within a basement are included as gross floor area. These service areas do not add to the overall bulk and scale of the development and do not compromise the desired future character of the area. These service areas do not compromise the amenity of surrounding occupiers by being visually intrusive, and do not result in additional noise and disturbance as they’re contained within the building envelope. No loss of privacy or outlook of neighbouring occupiers will occur.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed variation allows for the provision of improved residential accommodation, for family housing and improved amenity.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standards.