

Amended Clause 4.6 Exceptions to Development Standards Clause 4.4 Floor Space Ratio - Canterbury Local Environmental Plan 2012

Proposed Residential Flat Building - No. 10B Charles Street, Canterbury

1.0 Introduction

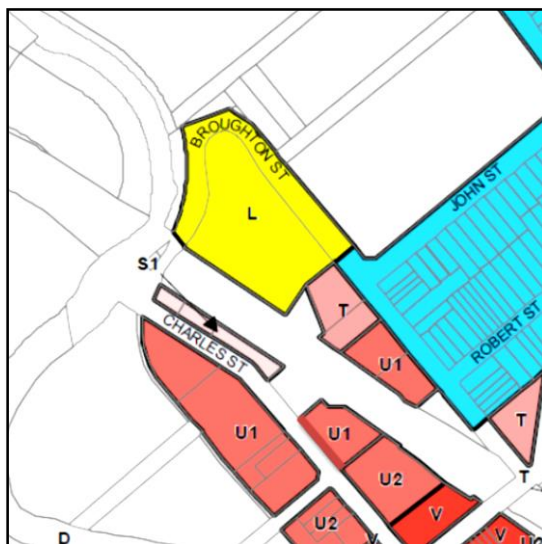
This amended Clause 4.6 Exceptions to Development Standards request has been prepared by Andrew Robinson Planning Services Pty Ltd on behalf of Charles Development Pty Ltd to accompany a development application for a proposed ten (10) storey residential flat building at No. 10B Charles Street, Canterbury.

This Clause 4.6 Exceptions to Development Standards request relates to the floor space ratio principal development standard prescribed under subclause 4.4(2) of *Canterbury Local Environmental Plan 2012*, namely:

The 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 indicates a maximum floor space ratio of 2.5:1 applies to the site. However, when calculated in accordance with the definition for gross floor area under the LEP, the development has a gross floor area of 6,315m². This equates to a floor space ratio of 2.62:1 and therefore, exceeds the statutory maximum of 2.5:1 by 285m².

Figure 1: Extract from Canterbury LEP 2012 Floor Space Ratio Map showing the 2.5:1 floor space ratio for the site (U1 = 2.5:1)



The following Canterbury LEP 2012 definitions are important in considering the proposed variation:

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 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.

2.0 The Effect of Clause 4.6 Exceptions to development standards

Clause 4.6 of Canterbury Local Environmental Plan 2012 states (in part):

- (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.*

In accordance with subclauses 4.6(3) & (4), this submission constitutes a written request that seeks to demonstrate:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (in accordance with Clause 4.6(3)(a));
- That there are sufficient environmental planning grounds to justify contravening the development standard (in accordance with Clause 4.6(3)(b)); and
- That the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone (in accordance with Clause 4.6(4)(a)(ii)).

This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline 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] NSWCA 248 ('Four2Five No 3')

In summary, the principles arising from the above matters are:

- (i) That the relevant objectives are those stated in the controls not unidentified underlying objectives at [57] in Four2Five No. 1;

- (ii) That the environmental planning grounds must be particular to the circumstances of the proposed development and/or the site at [60] in Four2Five No. 1; and
- (iii) The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* remain relevant. However, in order to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a), you need something more than way 1 in *Wehbe*, *because* that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.

In relation to (iii) above, Method 1 in *Wehbe* requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

However, as a result of Four2Five, it is now necessary to demonstrate something *more* than simply achieving the objective of the standard. In this regard, a proposed development that contravenes the development standard, but as a result, achieves the objective of the development standard to a greater degree than a development that complied with the standard, would suffice.

3.0 Justification for Variation

Strict Compliance is unreasonable or unnecessary in the circumstances of the case.

The objectives of the floor space ratio principal development standard are:

- (a) *to provide effective control over the bulk of future development,*
- (b) *to protect the environmental amenity and desired future character of an area,*
- (c) *to minimise adverse environmental impacts on adjoining properties and the public domain,*
- (d) *to optimise development density within easy walk of the railway stations and commercial centres.*

Having regard to the first method in *Wehbe*, it is considered that the proposed development achieves the objectives of the standard to a greater degree than a development that complied with the standard for the following reasons:

- The subject site and surrounding area has been ‘up-zoned’ from its former light industrial zoning to high density residential in order to facilitate Council’s vision for the revitalisation of the Canterbury Town Centre, which in part, seeks *to redevelop the riverfront district into an attractive, vital and vibrant mixed-use environment via a rich network of publicly accessible spaces and places.*
- As an urban core, the Canterbury Town Centre has the highest density character along Canterbury Road. The proposed development maximises residential density in easy walking distance to Canterbury Station, in a built form that is consistent with the built form on surrounding sites. In addition, the proposal seeks to provide additional residential accommodation in proximity to public transport, shops and services, which is considered to be a desirable planning outcome.
- The proposed FSR of 2.62:1 exceeds the maximum FSR of 2.5:1 by 285m² in gross floor area (GFA), representing a variation of 4.7% above the numerical development standard, Accordingly, in the context of the overall development the proposed variation is considered to be minor and has little bearing on the developments resultant building mass, bulk and height, which is contained almost entirely within the maximum building height limit for the site.
- Effectively, the additional density realised through the 285m² exceedance of the 2.5:1 standard manifests itself in 3 additional 2 bedroom units. This is consistent with the objective of optimising development density within easy walk of the railway stations and commercial

centres in a built form that will not have an adverse impact on surrounding development or the public domain in terms of solar access and visual and acoustic privacy etc.

- Council has already accepted development that exceeds the building height and/or floor space ratio principal development standards as being appropriate scale and built form in this locality – e.g. 2A Charles Street; 15-15A & 18 Charles Street. In doing so, the development standard has effectively been abandoned or destroyed through the granting of consents for development on other sites that also do not strictly comply with the development standard.
- Further, it is considered that the density proposed is sustainable and appropriate given that the site is located within an identified urban renewal corridor in the NSW Government's recently released *A Plan for Growing Sydney*, and is in close proximity to public transport (both train and buses) and the facilities and services available in the Canterbury Town Centre.

Strict compliance with the development standard would not alter the design approach or outcome for the site, and would not improve the building's relationship to its surrounding. The proposed design solution is considered to represent the best possible development outcome for the site, whilst ensuring the amenity of both existing and future residents is preserved. In light of the above the requirement to strictly adhere to the numerical development standard for FSR is considered to be unreasonable and unnecessary in this instance.

There are sufficient environmental planning grounds to justify contravening the development standard.

Based on the discussion above, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:

- The proposed FSR (2.62:1) for the development represents a 4.7% (285m²) increase over the development standard prescribed under Canterbury LEP 2012;
- The additional FSR is considered to be a relatively minor departure that has minimal effect to the overall bulk and scale of the proposed development;
- Despite the proposed development exceeding the FSR principal development standard, a comprehensive design process was been implemented to ensure that the development outcome responds effectively to its surroundings and minimises potential impacts on surrounding residents.
- Requiring the development to strictly adhere to the development standard would not enhance the relationship between the proposed building and its immediate surrounds; and
- The proposed development is consistent with the overarching FSR and zoning objectives for the site.

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.

The Table below demonstrates that the proposed development will be in the public interest because it will be consistent with both the floor space ratio principal development standard objectives and the R4 High Density Residential zone objectives of the LEP.

LEP Clause	Objective	Proposal
Clause 4.4 Floor Space Ratio	a) <i>To provide effective control over the bulk of future development</i>	The proposed development represents an appropriate use and density for the site as the bulk and scale of the building is consistent with existing developments and the desired future character for the locality.
	b) <i>To protect the environmental amenity and desired future character of an area.</i>	As stated above, the bulk and scale of the building is consistent with existing developments and the desired future character for the locality. The orientation of the site allows for the development to achieve reasonable amenity to all residential units. It is also noted that the development is capable of being adequately serviced, and the road network has sufficient capacity to accommodate the traffic to be generated by the development.
	c) <i>To minimise adverse environmental impacts on adjoining properties and the public domain.</i>	The proposed development will not result in any significant impacts on adjoining properties and the surrounding public domain and maintains an acceptable degree of solar access and visual privacy to surrounding development.
	d) <i>To optimise development density within easy walk of the railway stations and commercial centres.</i>	Despite exceeding the floor space ratio, the proposed density is considered appropriate for this emerging urban renewal area within easy walking distance of the railway station and nearby commercial area.
R4 High Density Residential Zoning Objectives	<i>To provide for the housing needs of the community in a high density residential environment.</i>	The proposed development will provide an additional 91 high quality residential units within the Canterbury Town Centre precinct. The variety of unit types provides for housing choice within Canterbury.
	<i>To provide a variety of housing types within a high density residential environment.</i>	As above, the variety of 1, 2 & 3 bedroom units in proximity to the Canterbury Town Centre (commercial precinct) provides a mix of additional housing choice in proximity to public transport options, as well as local shops and services. The sites proximity to the Canterbury commercial precinct, railway station, bus stops and cycle paths will encourage walking and cycling.
	<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	Noted. Residents will have access to facilities and services to meet their daily needs within close proximity to the site.

4.0 Director General's Concurrence

Clause 4.6(4)(b) requires the concurrence of the Director-General to be obtained prior to granting consent to a development that contravenes a development standard. However, as advised in Planning Circular PS 08-003, the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts Clause 4.6 of the Standard Template LEP.

Accordingly, as *Canterbury Local Environmental Plan 2012* adopts Clause 4.6 of the Standard Template LEP concurrence can be assumed in this instance.

Notwithstanding, provided below is a discussion on the matters under subclause 4.6(5) that the Director-General must consider in deciding whether to grant concurrence:

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

The variation to the floor space ratio principal development standard under *Canterbury Local Environmental Plan 2012* will not give rise to any environmental planning matter which could be deemed to have either State or Regional significance. The variation to the development standard being sought will not have any effects outside the immediate area of the site.

The public benefit of maintaining the development standard.

No substantive public benefit would be realised by maintaining the development standard. Reducing the FSR to strictly comply with 2.5:1 would not alter the overall design approach or outcome for the site and would not realise an improvement to the relationship between the site, the adjoining buildings and the surrounding area. Conversely, if the FSR development standard was to be maintained, there is the potential that there would be a detrimental impact to the redevelopment of the site by unnecessarily limiting the site from realising its full development potential, and in this regard prohibit the orderly and economic use of the land.

Any other matters required to be taken into consideration by the Director-General before granting concurrence.

The proposed variation will facilitate the orderly and economic redevelopment of the site for the purposes of a residential flat building that will positively contribute to the achievement of the vision and housing strategic objectives of the NSW Government's *A Plan for Growing Sydney* and the intent under *Canterbury Local Environmental Plan 2012*, for this site and the surrounding sites to be redeveloped from the former light industrial uses to a new high density residential precinct adjacent to public transport nodes and shops and services.

5.0 Conclusion

This proposed variation is based on the reasons contained within this written request for an exception to the floor space ratio principal development standard under Clause 4.4(2) of *Canterbury Local Environmental Plan 2012*.

Having regard to the discussion provided above, it can be concluded that strict compliance with the floor space ratio principal development standard under *Canterbury Local Environmental Plan 2012* is unreasonable or unnecessary in the circumstances of the case, as:

- there are sufficient environmental planning grounds, having regard to the Court matter *Four2Five v Ashfield Council* to justify the minor contravention to the development standard as the building has been designed to a high quality and amenity for future residents will be to a high standard;
- the proposed design solution is considered to represent the best possible development outcome for the site, whilst ensuring the amenity of both existing and future residents is preserved;
- the non-compliance does not directly result in any adverse environmental impacts in terms of the building being out of context with the prevailing (and anticipated) bulk and scale of development in the locality;
- A development that strictly complied with the numerical standard would not significantly improve the amenity of surrounding land uses and would not result in a more appropriate urban design response to the site
- the proposal will provide a high quality residential flat development that is sympathetic to and

in keeping with the existing and desired future character of the area and will provide a variety of housing choice in a high density residential environment, in proximity to public transport, facilities and services; and

- the scale and nature of the non-compliance does not give rise to any matter of State or Regional significance, nor does it adversely affect the public interest.

Having regard to the circumstances of this case where:

- the overall style, scale and built form of the building and associated landscaping will be commensurate with the existing and likely future 'built environment' and desired character of the area;
- the proposal will have a positive impact on the streetscape appearance and character of the locality;
- the proposal is generally consistent with the aims and objectives of *Canterbury Local Environmental Plan 2012*;
- the density proposed is sustainable and appropriate given that the site is located within an identified urban renewal corridor in the NSW Government's recently released *A Plan for Growing Sydney*, and is in close proximity to public transport (both train and buses) and the facilities and services available in the Canterbury Town Centre.
- Council has already accepted development that exceeds the building height and/or floor space ratio principal development standards as being appropriate scale and built form in this locality – e.g. 2A Charles Street; 15-15A & 18 Charles Street. In doing so, the development standard has effectively been abandoned or destroyed through the granting of consents for development on other sites that also do not strictly comply with the development standard; and
- the proposal is generally consistent with the objects of the *Environmental Planning & Assessment Act 1979*, in particular, the orderly and economic use and development of land and ecologically sustainable development,

it is submitted that this Clause 4.6 Exceptions to Development Standards request is well founded.

As such, strict compliance with the floor space ratio principal development standard prescribed in Clause 4.4 of *Canterbury Local Environmental Plan 2012* is unreasonable and unnecessary having regard to the circumstances of the case. Accordingly, having regard to the assessment contained in this Clause 4.6 Exceptions to Development Standards submission, it is requested that Council and the Joint Regional Planning Panel (JRPP) support the proposed variation and the development in its proposed form.

Dated: 26 October 2015

Andrew Robinson Planning Services Pty Ltd



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