

Supplementary Report III
Sydney North Planning Panel Meeting 13 December 2017
Dated: 13/12/2017

Subject: 496-498 and 500-520 Pacific Highway, St Leonards
Division: Environmental Services Division
Author: Rajiv Shankar

Property:	496-498 and 500-520 Pacific Highway, St Leonards	
	496-498 Pacific Highway (Friedlander Place)	Lot 1 DP 1179636
	500 Pacific Highway	Lot 1 DP 1146146
	504-520 Pacific Highway	Lot 1 DP 1203289
DA No:	DA15/212 - 2016SYE036	

SITE CONTEXT

The subject site is known as 496-498 Pacific Highway and 500-520 Pacific Highway; and comprises of three allotments of land.

The subject site is zoned B4 Mixed Use pursuant to Lane Cove Local Environmental Plan (LCLEP) 2009, and has a total site area of 3,752m².



Figure 1 – Subject site outlined in red
(Extracted from NearMap 19 October 2017)

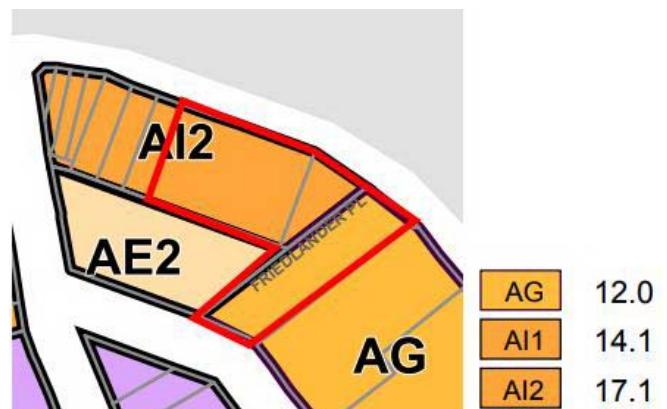


Figure 2 – Extract from FSR Map (LCLEP 2009)
Subject site outlined in red

CLAUSE 4.4 – FLOOR SPACE RATIO

In accordance with Clause 4.4 – Floor Space Ratio of LCLEP 2009, two maximum floor space ratios (FSRs) apply to the subject site – Refer to Figure 2.

The maximum FSR permitted for development on the subject site is indicated as follows in the table below:

Site	Site Area	Max. FSR permitted under LCLEP 2009	Equivalent GFA
496-498 Pacific Highway, St Leonards	1,475m ²	12:1	17,700m ²
500-520 Pacific Highway, St Leonards	2,277m ²	17:1	38,709m ²

In this regard, the maximum combined GFA permitted for development on the subject site is 56,409m² (Typological error is noted in the applicant’s variation request as being 56,509m²).

The proposed development provides a total gross floor area (GFA) of **47,868m²**, well below the maximum FSR permitted for the site, and exceeds the maximum FSR permitted for part of the site being 496-498 Pacific Highway, which is subject to a maximum FSR of 12:1 – Refer to table below.

Notwithstanding the variation to the FSR standard sought to this part of the site, the proposed development complies with the maximum FSR permitted to the overall site.

Site	Max. FSR permitted under LCLEP 2009	Total Max. FSR permitted on overall site	GFA provided on overall site	Compliance
496-498 Pacific Highway, St Leonards	12:1 (17,700m ²)	Max. 56,409m ²	Proposed 47,868m ² 47,868m ² (Total GFA) ÷ 3,752 m ² (Total Site Area) 12.758:1	No – Extent of FSR variation is 0.758:1 for 496-498 Pacific Highway
500-520 Pacific Highway, St Leonards	17:1 (38,709m ²)			Yes for 500-520 Pacific Highway

EXCEPTIONS TO DEVELOPMENT STANDARDS WITHIN LANE COVE LEP 2009

Objectives of Clause 4.6 of LCLEP 2009

- (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.*

The Applicant’s written request to vary the FSR development standard, under the provisions of Clause 4.6 of LCLEP 2009 is provided as **Attachment 1**.

The Applicant has provided the following justification for the variation to FSR.

“This variation request seeks that the total floor area (being a GFA of 47,868m²) equivalent to a total FSR across the site of 12.758:1 be supported by the consent authority in this instance. Overall, the extent of the variation is an FSR of 0.758:1 as it applies to 496-498 Pacific Highway, St Leonards. It is noted that the proposed FSR does not exceed the development standard as it relates to land known as 500 and 504-520 Pacific Highway St Leonards.”

Assessment of the exception under Clause 4.6:

In assessing an exception to vary a development standard, the following needs to be considered:

1. Is the planning control a development standard?

Yes, Clause 4.4 – Floor Space Ratio is a development standard.

2. What is the underlying object or purpose of the standard?

The purpose of Clause 4.4 is to ensure that the built form of new developments reinforce and respect the existing character and scale of land uses, having regard to the area of the site and the type of development proposed. Clause 4.4 specifically states that the objective of Clause 4.4(1)(a) is “to ensure that the bulk and scale of development is compatible with the character of the locality.”

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Preston CJ, in Wehbe v Pittwater Council [2007] NSWLEC 827, stated that “the rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Compliance with the development standard is considered to be unreasonable or unnecessary in the circumstances of the subject proposal. The overall maximum FSR for the site (47,868m²) would be less than the total GFA allowable on the whole of the site (56,409m²). Variation sought to the FSR development standard is considered to be minor as it is only sought to part of the site as a result of the dual maximum FSR standards which apply to the subject site.

In addition, Preston CJ, in Wehbe v Pittwater Council [2007] NSWLEC 827, established a number of ways of determining whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common approach is to establish that compliance with the objectives of the control is achieved notwithstanding non-compliance with the particular standard.

In accordance with Clause 4.6(4)(a)(ii) of LCLEP 2009, 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 in which the development is proposed to be carried out”.

Objectives of the particular standard

The objectives of Clause 4.4 Floor Space Ratio are as follows:

4.4 Floor Space Ratio

(1) *The objectives of this clause are as follows:*

(a) *to ensure that the bulk and scale of development is compatible with the character of the locality.*

Comment:

The proposal retains an appropriate building density on the site, consistent and compatible with the scale of mixed use development within the immediate locality. The proposed development complies with the overall height standard and is compatible with the desired future character of built form within the St Leonards locality. In addition, the proposal

responds to the site specific LEP and DCP which applies to the subject site, and meets the design principles of SEPP 65 and the ADG.

Having regard to the above, strict compliance with the FSR development standard is considered to be unreasonable and unnecessary, in the circumstances of the case.

Objectives for development within the zone

The subject site is zoned B4 Mixed Use pursuant to LCLEP 2009.

The objectives of the B4 Mixed Use zone are as follows:

Zone B4 Mixed Use

1 Objectives of zone

- *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 encourage urban design maximising attractive public domain and adequate circulation space for current and future users.*
- *To maximise sunlight for surrounding properties and the public domain.*

Comment:

The proposal provides a mix of uses, being commercial, retail and residential. The proposed development makes provision for public open space in the form of a public plaza and pedestrian circulation on Friedlander Place. Furthermore, the proposed development has been designed to maximize solar access to the surrounding properties and the public domain.

In this regard, strict compliance with the FSR development standard is considered to be unreasonable and unnecessary in these circumstances.

4. Are there sufficient environmental planning grounds to justify contravening the development standard?

The decision in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, indicates that merely showing that the development standards achieves the objectives of the development standard is insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6. The case also demonstrates that the requirement in Clause 4.6(3)(b) of the LEP to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity.

Despite the non-compliance with the maximum FSR for one part of the site, the proposal remains consistent with the objectives of the zone and has demonstrated the following:

- The development fully complies with the maximum building height control and is of an appropriate density when considered in context, noting the minor increase in floor space for part of the site.
- The overall design of the proposal is consistent with the site specific controls contained within LCLEP 2009, LCDCP, SEPP 65 and the ADG.

- The variation to the FSR development standard for the proposal does not contribute to the building being of an unreasonable bulk and scale.
- The proposal would not result in any additional adverse amenity impact on neighbouring properties with respect to solar access or privacy.
- The proposal would provide for the redevelopment and improvement of much needed public open space for the community and visitors to the immediate area in the form of Friedlander Place.

5. Is compliance with the development standard consistent with the objectives of the development standard and the relevant objectives of the land zone?

The bulk and scale of the building is compatible with the character of built form within the St Leonards precinct and would not result in an unreasonable impact on the solar access of neighbouring properties. The proposal remains consistent with both the objectives of Clause 4.4 Floor Space Ratio and the B4 Mixed Use zone.

6. Will strict compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EPA Act?

Strict compliance with the development standard would not hinder attainment of the objectives specified in section 5(a)(i) and (ii) of the EPA Act as the proposed development would retain the social and economic welfare of the community, particularly that of neighbouring development within the subject site, and promote the orderly, economic use and development of land.

7. Is the exception well founded?

The proposal is considered to be consistent with the objective of the FSR development standard as the bulk and scale of the development is in keeping with the desired and prevailing character of mixed use development in the St Leonards locality. The proposal has also been designed to ensure amenity is appropriately maintained between adjoining land uses. As such, the exception is considered to be well founded.

CONCLUSION

Council has considered the request for a variation to the FSR development standard under Clause 4.6 of LCLEP 2009. Strict compliance with the FSR standard is considered to be unreasonable and necessary in the circumstances of the case. On balance, the proposed development is satisfactory, and the request for variation is considered to be well founded and supported.

Michael Mason
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Lane Cove Council