



Clause 4.6 Variation Floor Space Ratio

St George Specialist Centre

131 Princes Highway, Kogarah

Lots C and D in DP418072

Prepared by Willowtree Planning Pty Ltd on
behalf of Ramsay Health Care

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Clause 4.6 Variation – Floor Space Ratio

Ramsay's Health Care Facility - 131 Princes Highway, Kogarah, Lots C and D in DP418072, WTJ17-124

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PART A PRELIMINARY

1.1 Introduction

This Clause 4.6 Variation request has been prepared in support of a Development Application (DA) for the proposed demolition of existing structures and the construction and use of a new Specialist Centre at 131 Princes Highway, Kogarah. The site is legally described as Lots C and D in DP418072.

This Clause 4.6 Variation has been submitted to assess the existing and proposed non-compliance with the Floor Space Ratio (FSR) standard under the Clause 4.4. of the *Kogarah Local Environmental Plan 2012* (KLEP2012) for the Gross Floor Area (GFA) calculation of the building.

This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of KLEP2012 which includes the following 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.

Under the provisions of Clause 4.4 in KLEP2012, the site is subject to a maximum FSR of 4.5:1.

Based on a site area of 786.60m² and an FSR control of 4.5:1, a maximum GFA of 3,550m² may be obtained at the site. The proposed development would result in a GFA of 3,888.8m² and an FSR of 4.94:1. The proposed development therefore exceeds the Clause 4.4 FSR control of 4.5:1 applicable to the site under the KLEP2012. A summary of the existing and proposed GFA and FSR calculations for the site in accordance with KLEP2012 is provided in **Table 1** below.

Table 1 GFA and FSR Summary – KLEP2012		
	Existing	Proposed
Site Area	786.60m ²	786.60m ² (No change)
GFA	783m ²	3,888.80 (3105.8m ² increase)
FSR	1:1	4.94:1

The proposed development results in an increase of FSR from 1:1 to 4.94:1. As such, the proposed development is representative of a more efficient use of the site when compared to the current scenario, where the potential FSR is underutilised.

Table 2 outlines the proposed Clause 4.6 Variation to the KLEP2012 Clause 4.4.

Table 2 Proposed FSR Variation – KLEP2012			
KLEP2012 Clause	KLEP2012 Development Standard	Proposed Development Non-Compliance	Percentage of Variation
Clause 4.4 FSR	Clause 4.4 of KLEP2012 prescribes a maximum FSR of 4.5:1	The proposed development seeks consent for an FSR of 4.94:1	The existing FSR is 1:1, the proposed FSR is 4.94:1. The percentage Variation between these two figures is 20.2%
	The existing FSR at the site is 1:1		The proposed FSR is 4.94:1 and the maximum allowable

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			FSR is 4.5:1. The percentage Variation between these two figures is 9.8%
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In accordance with Clause 4.6 of KLEP2012 Council is required to consider the following Subclause 4.6(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.*

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 under KLEP2012.

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PART B STANDARDS BEING OBJECTED TO

2.1 CLAUSE 4.6 FLOOR SPACE RATIO OF THE KLEP2012

The development standard being requested to be varied is **Clause 4.4 Floor Space Ratio** of KLEP2012 which is as follows:

4.4 Maximum Floor Space Ratio

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,*
 - (b) *to limit the bulk and scale of development.*
- (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.*

Pursuant to Clause 4.6, the proposed development seeks exception to the 4.5:1 maximum FSR ratio.

The site is zoned B4 Mixed use under KLEP2012, where medical centres are permitted with development consent. This DA therefore relies upon what is reasonably attributed to the underlying objectives of the standard and the B4 Mixed use zone.

2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determination of the appropriateness of a Clause 4.6 Variation to a development standard is the proposed development's compliance with the underlying objectives and purpose of that development standard. Therefore, while there is a specified numerical control for FSR, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Part C of this Clause 4.6 Variation addresses the proposed Variation to the relevant Clause 4.4 development standard.

2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks approval for the demolition of existing structures and the construction and use of a six-storey Specialist Centre with new, state of the art saleable and leasable areas for consulting suites and outpatient services. The proposed development would result in an FSR of 4.5:1+9.8% (or 4.94:1) under Clause 4.4. of KLEP2012.

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PART C PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

Pursuant to Clause 4.6 of KLEP2012, Ramsay hereby seeks exception to the 4.5:1 FSR applicable pursuant to Clause 4.4 of KLEP2012. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the development standard and the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in Clause 4.4(1) of KLEP2012 are:

- (a) to ensure the intensity of development is compatible with the desired future character and zone objectives for the land; and*
- (b) to limit the bulk and scale of development.*

The density of the proposed development would be in keeping with the surrounding built form elements of this health and education precinct, including the collocated St George Hospital (public) and St George Private Hospital, and the approved St George Private Hospital Multi-Level Carpark which is being progressively constructed on Hogben Street. In fact, the proposed development capitalises on other planning controls at the site, including the 39m building height limit under the KLEP2012, and the requirement for developments to be street aligned on this corner of South Street and Princes Highway under the *Kogarah Development Control Plan 2013* (KDCP2013).

Additional traffic generated by the proposed development would be sufficiently accommodated for in the adjoining St George Private Hospital Multi-Level Carpark on Hogben Street, which was approved on 1 June 2015 (DA 9/2014/307/1). Two levels of the Multi-Level Carpark would be constructed to support the proposed development.

3.2 OBJECTIVES OF THE ZONE

The site is currently zoned B4 Mixed use under KLEP2012. The proposed development is located in the Kogarah health and education precinct (under the Draft South District Plan) and is permissible at the site. The proposed development is consistent with the following B4 zone objectives:

- *Provide a mixture of compatible land uses;*

The proposed development would facilitate a land use which is compatible with those existing in the near vicinity of the site, ensuring the site remains compatible with its surrounding local context and character as part of the Kogarah's health and education super precinct.

- *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;*

The proposed development would provide specialist medical services close to existing public and private transport and healthcare infrastructure.

- *To encourage development that contributes to economic growth and employment opportunities; and*

The proposed development would capitalise on existing public and private infrastructure, make efficient use of a brownfields site, and stimulate employment within the health care services sector. Indeed, the location of the site was chosen due to its immediate proximity to a range of existing health care services, as well as its high accessibility by both public and private modes of transport.

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- *To encourage development that contributes to an active, vibrant and sustainable town centre.*

The proposed development would improve the access of medical specialists to Kogarah's health and education super precinct as identified in the Draft South District Plan, further strengthening the health and education super precinct by encouraging long-term surgical and medical practices based out of the collocated St George Hospital (public) and St George Private Hospital.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with this standard would be unreasonable given that the proposed development has been designed to make the most out of the site's strategic location near to existing public and private transportation and healthcare infrastructure. A different site configuration would have likely resulted in a less efficient use of these site-specific opportunities, and use of a different site would have meant that the proposed development could not be collocated near to existing health service facilities, reducing the range of services could not be offered in the same locale.

Indeed, the current building at the site represents a significant underutilisation of the site's planning potential. The proposed development makes full use of the site's planning potential, where a 39m building height limit is prescribed and the DCP2013 requires built form street alignment.

The density of the proposed development would also be in keeping with the surrounding built form elements of this health and education precinct, including the collocated St George Hospital (public) and St George Private Hospital and the approved St George Private Hospital Multi-Level Carpark which is being progressively constructed on Hogben Street.

A built form proposal with a lesser FSR would not only represent an underutilisation of this available land within the strategically significant health and education super precinct, but it would also be inconsistent with the density of the existing, surrounding built form along South Street.

It is noted that the Clause 4.4 FSR control already prevents the site from meeting its permitted building height potential under Clause 4.3 of the KLEP2012, as the proposed development, with a building height of 25m would already fall short of the maximum allowable 39m under Clause 4.3.

Constraining the site by requiring it to meet the exact numerical parameters of the FSR control would further restrict opportunities for Ramsay to attract and retain specialist medical and surgical staff at the Kogarah health and education super precinct. A smaller built form footprint would also threaten the financial viability of the proposed development, by reducing the overall state of the art saleable and leasable areas at the site. It would also threaten the feasibility of financing the proposed Airbridge connection to the collocated St George Private Hospital, meaning that opportunities to create synergies between medical practices at the two sites would be reduced.

The B4 zoning of the site and its surrounds has, so far, been instrumental in facilitating the growth of the Kogarah health and education super precinct. The proposed development would continue this strategic use of the B4 zone at Kogarah to enhance the role of the health and education super precinct. The Clause 4.6 Variation is considered well founded in this instance for the following reasons:

- As the FSR of the proposed development is closer to the maximum allowable FSR under Clause 4.6 than the current scenario, it therefore represents a more efficient use of the site; and
- The proposed development makes full use of the site's planning potential, where a 39m building height limit is prescribed and the DCP2013 requires built form street alignment.

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The abovementioned justifications are considered valid and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development is integrated within the existing Kogarah health and education super precinct and represents a more efficient use of the site than the current scenario. The objectives of the relevant clause and B4 Mixed use zone would be upheld as a result of the proposed development.

3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Clause 4.6 Variation to the development standard for FSR is considered well founded because, notwithstanding the proposed non-compliance with FSR:

- The proposed development is entirely consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**;
- The proposed development is entirely consistent with the underlying objective or purpose of the B4 Mixed use zone as demonstrated in **Section 3.2**;
- The proposed non-compliance would not result in a built form density which is inconsistent with the surrounding local context and character;
- As the FSR of the proposed development is closer to the maximum allowable FSR under Clause 4.6 than the current scenario, it therefore represents a more efficient use of the site;
- The proposed development is consistent with the desired character of the site as part of Kogarah's health and education super precinct;
- The proposed development makes full use of the site's planning potential, where a 39m building height limit is prescribed and the DCP2013 requires built form street alignment;
- Additional traffic generated by the proposed development would be sufficiently accommodated for in the adjoining St George Private Hospital Multi-Level Carpark on Hogben Street. Two levels of the Multi-Level Carpark would be constructed to support the proposed development. The proposed development would therefore not create additional traffic congestion which cannot be catered for;
- The Traffic Impact Assessment and Acoustic Impact Assessment prepared in support of the proposed development concluded that the proposed development would not result in significant impacts to the surrounding amenity.

3.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the *Environmental Planning and Assessment Act 1979* (EP&A Act) are required to be made with regard to the objectives of the EP&A Act. **Table 3** assesses the proposed development is assessed against these objectives.

Table 3 EP&A Act Objectives	
Objective	Proposed Development Compliance
(a) to encourage:	
(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,	The proposed development would capitalise on the location of the site in the near vicinity of existing health services facilities, resulting in a convenient range of services being offered in one locale. It would assist in attracting and retaining medical and surgical staff at the Kogarah health and education super precinct through the provision of specialist suites, where doctors can establish their places of business long-term, servicing to the community's growing health needs.
(ii) the promotion and co-ordination of the orderly	As the FSR of the proposed development

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and economic use and development of land,	is closer to the maximum allowable FSR under Clause 4.6 than the current scenario, it represents a more efficient use of the site. The proposed development also creates an incentive to investigate and manage the minor legacy contamination issues which are present at the site due to its historical use for light industrial purposes.
(iii) the protection, provision and co-ordination of communication and utility services,	The proposed development is capable of being serviced by communications and utility infrastructure without placing undue strain on the existing networks.
(iv) the provision of land for public purposes,	The proposed development would take place on land zoned B4 Mixed use, which is earmarked for uses contributing to the Kogarah health and education super precinct. There is no existing land dedicated for public purposes at the site. The proposed development is therefore not required to provide additional public space, nor would it detract from any existing or future earmarked public space.
(v) the provision and co-ordination of community services and facilities, and	By creating new, state of the art saleable/leasable areas for health services facilities, the proposed development would also contribute to the return of quality services for the residents of NSW.
(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and	The Statement of Environmental Effects prepared to support the proposed development found that the proposed development would not impact on the biophysical environment. There is no existing native flora or fauna habitat located at the site or its surrounds.
(vii) ecologically sustainable development, and	The proposed development would make use of a brownfields site which can be redeveloped with only negligible environmental impacts.
(viii) the provision and maintenance of affordable housing, and	As the proposed development does not relate to residential accommodation, this objective is not relevant to the proposed development.
(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and	As outlined in the Statement of Environmental Effects prepared to support the proposed development, the proposed development demonstrates compliance with the aims of NSW Government strategic plans relevant to the site. Given the cost of the proposed development, it would be determined after review by Georges River Council.
(c) to provide increased opportunity for public involvement and participation in environmental	The DA for the proposed development would be subject to the relevant public

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planning and assessment.	notification requirements.
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3.6 OVERVIEW

For the reasons outlined above, it is considered that the objection to Clause 4.4 of KLEP2012 is well-founded in this instance and the granting of a Clause 4.6 Variation to the development standard is appropriate in the circumstances. Furthermore, the objection is considered to be well founded for the following reasons:

- Strict compliance with the standards would hinder the achievement of the objects of the EP&A Act (refer to **Section 3.5**);
- The proposed development is consistent with the surrounding health and education precinct, the development standards of KLEP2012 and the controls in the KDCP2013; and
- No unreasonable impacts are associated with the proposed development.

Overall, it is considered that the proposed Clause 4.6 Variation to the existing and maximum FSR control is entirely appropriate and can be clearly justified having regard to the matters listed within KLEP2012 Clause 4.6.

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PART D CONCLUSION

It is requested that council supports the proposed Clause 4.6 Variation to Clause 4.4 of KLEP2012 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The proposed development would capitalise on the site's full planning potential as a significant component of the Kogarah health and education super precinct;
- No unreasonable environmental impacts are introduced as a result of the proposed development; and
- There is no public benefit in maintaining strict compliance with the standards.

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favorably considered by Council.