

Clause 4.6 Request to Vary Development Standard

34-42 EAST STREET
GRANVILLE

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QUALITY ASSURANCE

Project:	Clause 4.6 Request to Vary Development Standard: Mixed Use Development
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CLAUSE 4.6 VARIATION REQUEST: FLOOR SPACE RATIO

This Clause 4.6 Variation request has been prepared in support of a departure to the maximum floor space ratio contained within Parramatta Local Environmental Plan 2011.

A detailed discussion against the relevant provisions of Clause 4.6 are provided below with further discussion against the relevant case law 'tests' set down by the Land and Environment Court. The proposed development varies the floor space ratio control to a very minor extent to cater for the bike storage facility which is located within the rooftop area adjoining the common open space. The proposal has been the subject of a design excellence competition and the rooftop space forms an integral part of the architecture of the design excellence scheme. The bike storage area is to be located within the rooftop area of the built form which is an integral part of the architecture of the building. The bike storage area seeks to utilise the rooftop space by providing bike storage facilities for the residents. Noting the bike storage area adjoins one of the areas of communal open space as such it is an area that will be frequently used by the future residents of the building.

The proposal presents the following departures to the floor space ratio control:

- The floor space variation, relative to the bike storage area equates to 85m² or 0.19%.

The plans provided with this development application demonstrates the nature of the departure and the portion of the bike storage area that is considered to be floor space ratio. It should be noted that bike storage areas are generally excluded from the gross floor area calculations in normal circumstances however in this case because the strict requirements of the design excellence competition prohibit the development of a basement, an alternative bike storage area has been located directly adjoining the rooftop common open space area.

MAXIMUM FLOOR SPACE RATIO

The Parramatta LEP 2011 provides for a maximum floor space ratio for this land of 6:1.

The design seeks to deliver a proposal which is aligned with Council's (and Urban Growth's) vision for the revitalisation of Granville and contributes to the surrounding established streetscape character.

Therefore, a clause 4.6 variation request has been prepared, noting that the request addresses several recent Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*.

The key tests or requirements arising from the above relevant judgements is that:

- The consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and zone is not a requirement to “achieve” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives.
- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in Wehbe v Pittwater.
- The proposal is required to be in ‘the public interest’.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the floor space ratio standard
- Demonstrating consistency with the B4 zoning
- Satisfying the relevant provisions of clause 4.6.

These matters are addressed below, noting that the proposal presents significant public benefit through the development of a high quality building that will deliver housing to the local community within a highly accessible location. The site is also to be activated on the ground floor by providing new retail/commercial spaces that will serve the needs of the local community. Further the proposal provides a development scheme which contributes to the emerging streetscape character of Granville and is consistent with the high-density character of this precinct, this facilitates clear urban design benefits.

Strict compliance with the floor space ratio provisions and removal of the bike storage area from the rooftop would not impact on the building envelope proposed at all. The building envelope remains the same as was awarded design excellence and this space would simply be void space if it were not used for the bike storage.

The departure does not at all increase overshadowing from the additional built form as the bike storage area is making use of void space within the architectural roof feature of the building. The use of the space to allow for bike storage will encourage the residents to use active transport and to participate in cycling recreational activities.

CONSIDERATION OF CLAUSE 4.6

Clause 4.6 of the Parramatta Local Environmental Plan 2011 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

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 this 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.

Each of these provisions are addressed individually below.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the development standard are stated as:

The objectives of this clause are as follows:

- a) to regulate density of development and generation of vehicular and pedestrian traffic,
- b) to provide a transition in built form and land use intensity within the area covered by this Plan,
- c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,
- d) to reinforce and respect the existing character and scale of low density residential areas.

The proposed non-compliance occurs for the reasons established previously and the proposal remains consistent with the objectives based on the following:

- The proposed building will present an appropriate bulk and scale on the site with the building envelope remaining as has been awarded design excellence. The additional 85m² of gross floor area does not generate any additional amenity impacts given the location of the site and the surrounding site context noting particularly the location of the site and relationship to the development opposite the site in East Street that has a comparable height.
- The bike storage area forms part of the architecture of the building and is not adding any additional bulk or scale.
- The overall bulk and scale of the development presents as a compatible form of development to the anticipated mixed-use buildings that will emerge in the locality.
- The DCP advises within Part 4 Section 1 sub-section 4.1.6 that mixed-use development within the Granville town centre is to be located between the railway line and Cowper Street with increased height limits and floor space ratios permitted on larger sites. The proposal achieves the objectives within Section 4.1 of the DCP.
- The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors.
- The proposal does not result in any increased shadow impact given the tower form and documentation submitted with this application demonstrates minimal impact on adjoining land.
- The non-compliance to the gross floor area has no impact on the setting of any items of environmental heritage or view corridors.
- The proposal does not adjoin any low-density areas or sensitive interfaces as and will integrate with future development on site.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable.

The unique circumstances for proposing a variation to the maximum floor space ratio limit are complex as related to this proposal. Principally, the issues relate to efficient

use of land, access to infrastructure, maximising space at the ground level for public domain, no environmental impacts and a better public domain which will seek to deliver a new integrated as well as vibrant community to Granville. The following discussion demonstrates that support of the proposed departure, in these unique circumstances achieves a superior outcome for this site.

OVERSHADOWING COMPARISONS

As stated previously there is no resultant overshadow impact resulting from the proposal as the building form will not change as a result of the location of the bike storage area. The roof profile of the building is an integral part of the design competition winning scheme that will be built regardless of whether the space is utilised for the bike storage or not. The bike storage in this location is ideal as the storage area adjoins the rooftop common open space which is designed to be a feature of the site that residents will frequent.

Clause 4.6(4)

In accordance with the provisions of clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the floor space ratio control. In addition, the proposal is consistent with the objectives of the B4 zone, being:

- 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 development that contributes to an active, vibrant and sustainable neighbourhood.

The proposal will provide a high-quality mixed-use development in a strategic location within proximity to the Granville Train Station, bus interchange and town centre to maximise public transport patronage and to encourage walking and cycling. The scale of the development will help to revitalise the area with the proposed retail suites on ground level, which enables the activation of East Street.

As a result, the development will contribute towards creating a vibrant and sustainable neighbourhood that will support both the function and growth of the Granville Town Centre.

Furthermore, the proposal will complement and enhance the local streetscape by virtue of the strong articulated podium building line and recessed tower element that will deliver clear legibility at the street level.

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

Clause 4.6(5)

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a. The contravention of the floor space ratio control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b. There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the floor space ratio control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality. The significant public benefit of the proposal must be emphasised in considering the merits of the departure to the floor space ratio control and the proposal is a site-specific response and is not replicated elsewhere in the precinct and as such 'precedent' issues are not relevant.

Strict compliance with the prescriptive floor space ratio requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

CONCLUSION

Following a review of the relevant planning controls, it is concluded that the proposed modified development is consistent with the objectives, planning strategies and detailed controls of these planning documents. Consideration has been given to the potential environmental and amenity impacts that are relevant to the proposed development and this report addresses these impacts.

The proposal seeks to increase the provision of convenience retail, improving the amenity of the precinct's existing and future residents by reducing the need for vehicular trips and encouraging a walkable neighbourhood with a vibrant active streetscape.

Having regard to the benefits of the proposal and considering the absence of adverse environmental, social or economic impacts, the application is submitted to Council for assessment and granting of development consent. Think Planners Pty Ltd recommends the approval of the modification application, subject to necessary, relevant and appropriate conditions of consent.