



Address: No. 896 Woodville Road, Villawood
Proposal: Shop Top Housing
DECEMBER 2024

CLAUSE 4.6 VARIATION (LANDSCAPED AREA)

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WOODVILLE ROAD, VILLAWOOD

PROJECT INFORMATION

The Proposal: This Clause 4.6 Variation (Landscaped Area) accompanies a development application lodged with consent of the registered property owners. The proposal seeks approval for demolition of the existing structures and construction of a multi-storey mixed use development comprising ground floor commercial premises and 148 dwellings over 3 levels of basement car parking.

Site: Lot 100 DP 1070965, Lot 3 DP 208677, Lot 1 DP 217764 & Lot 13 DP 220348
Nos. 896 – 898 Woodville Road & 15 Hilwa Street
VILLAWOOD NSW 2163

Architect: **tony owen ptncs**
Level 2, 12 - 16 Queen Street
CHIPPENDALE NSW 2008



CLAUSE 4.6 – VARIATION TO A DEVELOPMENT STANDARD

What is the environmental planning instrument/s you are seeking to vary?

The proposal seeks to vary Section 19(2)(b) of State Environmental Planning Policy (Housing) 2021 which establishes the non-discretionary development standard for landscaped area.

What is the site’s zoning?

The zoning of the site is E1 Local Centre Zone under the Fairfield Local Environmental Plan 2013. The objectives of the zone are as follows:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council’s strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure local centres are not dominated by one type of development and have ongoing capacity to provide a mix of retail, business and community use

Identify the development standard to be varied and the type of development standard.

The development standard to be varied is Section 19(2)(b), which prescribes a non-discretionary development standard for landscaped area. The landscaped area is a numeric standard.

19 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

What is the numeric value of the development standard?

Section 19(2)(b) of SEPP Housing prescribes a minimum landscaped area that is the lesser of 35m² per dwelling, or 30% of the site area.

What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

Section 19(2)(b) of SEPP Housing prescribes a minimum landscaped area that is the lesser of 35m² per dwelling, or 30% of the site area. The lesser volume of landscaping required is 30% of the site area = 1,323.8m² (noting 35m² x 148 dwellings = 5,180m²). The development proposes landscaping at ground level comprising 211.6m², or 4.8% of the site area, with the remainder of landscaping upon the site comprising planting on structure. This equates to an 84% variation to the non-discretionary standard.

How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (see a – e below as derived from *Wehbe v Pittwater Council* [2007] NSWLEC 827):

a) *Are the objectives of the development standard achieved notwithstanding the non-compliance?*

Comment: The objectives of Section 19 are as follows:

19 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Compliance with the standard is considered unreasonable and unnecessary in the circumstance as the proposed development is for a shop top housing within a high density town centre location, where the development controls applicable to development upon the site permit zero setbacks to all boundaries (see Villawood Town Centre Development Control Plan 2020 and relevant extract at **Figure 1** over page), commensurate with a 100% site coverage associated with business or commercial development at ground level. The proposed landscaping arrangements include a small area of landscape planting at ground level (211.6m²) adjacent the shared boundary with the R4 High Density Residential Zone to the site's immediate south, with the remainder of landscaping comprising planting on structure. Landscaped area is defined in Schedule 10 Dictionary of SEPP Housing as follows:

landscaped area means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.

It is suggested that despite this development standard being applicable to the proposed development of the site, it is not intended to thwart a proposal for mixed use development that is consistent with the objectives of the Villawood Town Centre Urban Design Study and its desired built form nominated in controls within the DCP.

Deep soil is a similar concept established by the Apartment Design Guide, with the intent of allowing for and supporting healthy plant and tree growth, as well as improving residential amenity and promoting management of water and air quality. The Apartment Design Guide provides for circumstances where deep soil is not practicable as follows:

Objective 3E-1

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality

Design Guidance

Achieving the design criteria may not be possible on some sites including where:

- the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)
- there is 100% site coverage or non-residential uses at ground floor level

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved, and alternative forms of planting provided such as on structure

The proposed development is located within the Villawood Town Centre, where sites within the immediate proximity have been or will be developed with zero setbacks.

The DCP specifies the desired future character of the Villawood Town Centre as 'an active commercial hub'; an urban framework structure plan for the Centre; building parameters, setbacks, and uses; and requirements for activate street frontages, public domain, place making and pedestrian circulation.

The DCP prescribes a zero setback to Woodville Road, Howatt Street and to the adjoining dwellings fronting Hilwa Street (i.e. proposed future park). See extract from the Villawood Town Centre Development Control Plan 2020 and its setback requirements over page at **Figure 1**.



FIGURE 1

Figure 4: Villawood Town Centre – Setbacks and number to storeys (extract from Villawood Town Centre DCP).

This DCP control is clearly at odds with the non-discretionary development standard concerning minimum landscaped. Achieving compliance with the landscaped area non-discretionary development standard would clearly frustrate the local planning controls and is unnecessary given the site's zoning and circumstances of the site.

Contravention of the non-discretionary development standard by the proposal does not give rise to any adverse environmental impacts.

Compliance with this standard is therefore considered to be unreasonable and unnecessary in the circumstances, as the proposed built form and footprint is consistent with its context, and the local planning controls applicable to the site, derived from the Villawood Town Centre Urban Design Study.

b) *Are the underlying objectives or purpose of the development standard not relevant to the development?*

Comment: No.

c) *Would the underlying objective or purpose be defeated or thwarted if compliance was required?*

Comment: No.

d) *Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?*

Comment: No.

e) *Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?*

Comment: Yes, the E1 Local Centre zoning and associated development controls (DCP) suggest it is inappropriate to apply the development standard in the circumstances.

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

Note: Environmental planning grounds are matters that relate to the subject matter, scope and purpose of the EP&A Act including the Act's objects. They must relate to the aspect of the proposed development that contravenes the development standard and not simply promote the benefits of the development as a whole.

Comment: Adequate grounds to vary the standard are available due to the location of the site within a E1 Local Centre zone (Villawood Town Centre) which permits mixed use development, prescribes that new developments to build to the site's property boundaries (zero setbacks) and requires development's to activate their respective street frontages. Compliance with the standard is unreasonable and unnecessary given the development will not cause an adverse environmental impact, as extensive on planting on structure is proposed, and as the site is directly adjacent the proposed future Hiwa Park.

Is there any other relevant information relating to justifying a variation of the development standard?

Comment: N/A

FIGURE 2

Detail of proposed planting on Level 1 structure (Extract: Landscape Plan, Sections & Detail).



CONCLUSION

This written request has been prepared in relation to a proposed 84% variation to the non-discretionary landscaped area development standard at Section 19(2)(b) of SEPP Housing.

The proposal provides an appropriate built form that is consistent with the local planning requirements for the Villawood Town Centre. Furthermore, the proposed development will not have an adverse impact on the amenity of adjoining properties as a result of the non-compliance, being consistent with the desired built form envisioned by the Villawood Town Centre Urban Design Study. It is unreasonable and unnecessary to require strict compliance with the non-discretionary landscaped area development standard in circumstances where the proposed development is proposing a footprint consistent with the local development controls, is within a high density town centre location, proposes to dedicate land for inclusion in an east-west open space link, and where the site otherwise adjoins a RE1 Public Recreation Zone which will become public park in the future. It is demonstrated that there are sufficient site-specific environmental planning grounds to justify a variation to the non-discretionary development standard in the circumstances of the case.