



Minto Planning Services

Town Planning Consultants

Clause 4.6 - Exceptions to Development Standards - Floor Space Ratio Asquith Leagues Club Ltd 11-37 Alexandria Parade, Waitara

The site is subject to a maximum FSR control of 0.5:1 (2,111.5m²). The existing development currently has an FSR of 0.72:1 (3,026.5m²) and which is to be reduced by the proposal to 0.71:1 (3,007.5m²).

The proposal, despite providing for a reduction in the overall FSR for the site, results in a technical non-compliance. Accordingly, this Clause 4.6 variation is provided on a precautionary basis.

It is submitted that the requirements of Clause 4.4 of the LEP are development standards and that any variation of those requirements requires the preparation of a submission pursuant to Clause 4.6 of the LEP.

The following assessment of the proposed variation against the requirements of Clause 4.6 is therefore provided.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.4 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of Clause 4.4 satisfies the definition of a development standard as determined by the Land & Environment Court of NSW.

On this basis it is considered that the proposal is a development standard for which Clause 4.6 applies.

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

It is my opinion that compliance with the requirements of Clause 4.4 is both unreasonable and unnecessary in the circumstances of this case for the reason that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

In addition to the above it is submitted that:

- The existing FSR for the site is 0.72:1 and which is to be reduced by the proposal to 0.7:1.
- The FSR control of 0.5:1 is not compatible with the floor area achieved by the existing surrounding developments which comprise large residential flat buildings ranging from 8-10 storeys in height.
- The proposal will not result in any impacts upon adjoining properties.

On the basis of the above it is my opinion that the objectives of the standard are achieved notwithstanding non-compliance with the standard and accordingly strict compliance would be unreasonable.

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

It is considered that a contravention of the development standard is justified on environmental planning grounds given that:

- The existing FSR of the site currently exceeds 0.5:1, being 0.72:1 and is proposed to be reduced to 0.71:1 as part of this proposal.
- The proposal will allow for the provision of improved facilities and amenity for the patrons of the Asquith Leagues Club and will improve the presentation to the Alexandria Street frontage in a manner which does not result in any detrimental impacts.

5. Is the proposed development 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 proposed development is in my opinion in the public interest because it is compliant with the zone objectives and the objectives of the particular standard.

In this regard the proposal is considered to be consistent with the objective of the B2 - Local centre zone as detailed below.

The objectives of the B2 - Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

It is considered that the proposal is consistent with the objectives of this zone for the following reasons:

- The proposal seeks to improve the services and facilities provided to patrons of the existing registered club.
- The club provides a range of facilities and services for the area's population including social interaction, cheap meals and entertainment.
- The existing club provides for existing employment opportunities and which will be expanded as a result of the proposed works.
- The subject site is located opposite Waitara Railway Station and is within walking distance of the Hornsby Town Centre.

In relation to the applicable objective of Clause 4.4 of the LEP the following assessment is provided:

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

- (a) to permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The proposal provides for the carrying out of alterations and additions to the existing Asquith Leagues Club. The proposal will result in a reduction in the site's overall FSR with the proposed additions to be built over an

existing paved car park area and therefore not resulting in an increase in the sites built upon area.

The proposed additions are also provided with appropriate setbacks from the site boundaries and are of a height, bulk and scale which is in keeping with the character of the locality.

The subject site is located directly opposite Waitara Railway Station and is well served by public transport as well as being within walking distance of the Hornsby Town Centre and residential precincts.

The proposal is therefore considered to be consistent with this objective.

The proposal therefore in my opinion is consistent with the applicable objectives of both Clause 4.4 and the B2 - Local Centres Zone.

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

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the particular site circumstances, the absence of any unreasonable detrimental impacts and the public benefit that arises from the provision of improved club facilities upon the site.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the maximum floor space ratio requirements of Clause 4.4 of the Hornsby Local Environmental Plan 2013 is appropriate in this instance.

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30th November 2021