



Revised Clause 4.6 Variation Request

SLEP 2012 CI 6.25(3)
APDG Block 3 Floor Plate Standard

November 2015

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Report Number	CI 4.6 Variation CI 6.25(3) Rev 2

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Introduction

This Clause 4.6 variation request has been prepared by Urbis on behalf of Wanda One Sydney Pty Ltd to request a variation to the site specific floor plate development standard prescribed for Tower A of the proposal. The variation is made pursuant to Clause 4.6 of SLEP 2012.

The stated objectives of Clause 4.6 of SLEP 2012 are:

- (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.*

This request seeks a variation from the site specific controls prescribed in Clause 6.25(3) of the SLEP 2012. Clause 6.25 of SLEP 2012 applies to the APDG block and allows additional heights on certain parts of the site if the prescribes footprint is not exceeded.

Proposed Variation

This request seeks to vary the site specific floor plate development standard contained in Clause 6.25(3) of Sydney Local Environmental Plan 2012 (SLEP 2012), which states:

- (3) *Despite clause 4.3, development **consent may be granted to the erection of a building with a maximum height of:***
- (a) *200 metres on up to 33% of the area of block 1, or*
 - (b) *155 metres on up to 42% of the area of block 2, or*
 - (c) **185 metres on up to 24% of the area of block 3.**
(our emphasis)

Clause 4.3 refers to the Building Height Map to SLEP 2012, which indicates a maximum building height of 110 metres for the APDG Precinct, within which the site is located.

Pursuant to Clause 6.25(8), 'block 3' means Lot 1, DP 220830 and Lot 1, DP 217877, which are the allotments comprising the site. Clause 6.25(7) also identifies that development on land in block 3 may also relate to the whole of Lot 180, DP 606866, and/or Lot 1, DP 537286.

When referring to the definition of block 3 as outlined within Clause 6.25(8) only, the standard effectively equates to a 644.6sqm floor plate / foot print control on Tower A.

The approved detailed development consent (D/2010/2029) for the site takes advantage of the above 185 metre APDG height provision, with a tower element having a footprint of 644sqm extending to RL191.0 (185 metres), representing 23.9% of the 2,686sqm area of block 3, in accordance with the 24% standard.

The proposed amendments laterally extend the approved tower floor plate to the north, south and east, increasing the tower floor plate to 712sqm, or 26.5% of the area of block 3, as defined within Clause 6.25(8).

1. Is the requirement a development standard?

The proposed variation relates to the floor plate size standard, which is clearly a ‘development standard’, in that it provides a numeric restriction over a particular aspect of the development, not a prohibition of the development.

2. Is the development standard excluded from the operation of this clause?

The proposed variation is not a development standard excluded from the operation of Clause 4.6 by subclause (8), as it does not relate to:

- Complying development;
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- Clause 5.4 of SLEP 2012 (Miscellaneous Permissible Uses)
- Clause 4.3 (Height of buildings), being in Area 1 or Area 2 on the Height of Buildings Map
- Clause 3A (Development below ground level in Zone RE1),
- Clause 6.10 (Heritage floor space),
- Clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),
- Clause 6.17 (Sun access planes),
- Clause 6.18 (Exceptions to sun access planes),
- Clause 6.19 (Overshadowing of certain public places),
- Clause 6.26 (AMP Circular Quay precinct),
- Division 1 of Part 7 (Car parking ancillary to other development).

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

The objective of Clause 6.25 of SLEP 2012 is stated at subclause (1) as being:

“to provide for additional building height on parts of certain sites (within the area bounded by Alfred Street, Pitt Street, Dalley Street and George Street (known as the “APDG block”)) if the development of the site provides for publicly accessible open space, lanes and other links through the site”.
(our emphasis)

In addressing this objective, and granting any consent subject to Clause 6.25(3), the consent authority must also be satisfied pursuant to clause 6.25(4) that the development will:

- (a) *include recreation areas and lanes and roads through the site, and*
- (b) *include business premises and retail premises that have frontages at ground level (finished) to those recreation areas, lanes and roads, and*
- (c) *provide a satisfactory distribution of built form and floor space development.*

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

Non-compliance with the floor plate size development standard is unreasonable in this circumstance having regard to:

- Compliance with the objectives of the development standard.
- Whether the underlying objective or purpose would be defeated or thwarted if compliance was required with the standard.

These matters are discussed in detail below.

4.1 COMPLIANCE WITH THE OBJECTIVES OF THE STANDARD

Clause 6.25 states the following objective for the APDG precinct:

“to provide for additional building height on parts of certain sites (within the area bounded by Alfred Street, Pitt Street, Dalley Street and George Street (known as the “APDG block”)) if the development of the site provides for publicly accessible open space, lanes and other links through the site”.

The APDG precinct is subject to a uniform underlying 110 metre building height standard. Consistent with the above objective subclause 6.25(3) identifies three ‘blocks’ on which additional height may be provided if the relevant block is consolidated, and identifies the proportion of the site area of the block that may extend to this additional height, in this case 24%. The other two blocks are subject to considerably more liberal floor plate controls of 33% and 42%.

Subclause (7) is explicit that development in block 3 may also relate to Lot 180, DP 606866 (The Rugby Club) and Lot 1 in DP 537286 (Fairfax House). While the applicant has recently purchased Fairfax House and exchanged contracts on the Rugby Club, and this Stage 1 SSDA applies to the enlarged site, the inclusion of additional land is beyond the scope of the amending DA and it may be argued that no explicit provision is made in Clause 6.25 for the 24% site area standard to be extended to the enlarged site area.

While the proposed enlargement of the tower floor plate results in it equating to 26.5% of the area of block 3, thereby exceeding the 24% standard, if the enlarged site area including Fairfax House and the Rugby Club sites are considered, the proposed tower floor plate equates to only 17.62% of the enlarged site area, as detailed in Table 1.

TABLE 1 – FLOOR PLATE PERCENTAGE CALCULATIONS

ALLOTMENTS	SITE AREA	APPROVED 644SQM TOWER FLOOR PLATE	PROPOSED 712SQM TOWER FLOOR PLATE
Block 3	2,686sqm	23.98%	26.51%
- Rugby House	916.5sqm		
- Fairfax House	437.5sqm		
Enlarged Block 3	4,040sqm	15.94%	17.62%

With regard to the additional matters stipulated in Clause 6.25(4), as detailed in the accompanying Statement of Environmental Effects:

- a) The proposal does include recreation areas, lanes, and roads through the site. This cannot be disputed. The Voluntary Planning Agreement described at Section 6 of the Amended DA SEE or Section 5.8 of the Stage 1 SSD Development Application EIS outlines the lanes and roads that are proposed to be dedicated and otherwise given rights of access, rights of footway and public recreation on the site.
- b) The ground level of Tower A has been designed to accommodate retail premises at street frontages and notably adjacent to the proposed through-site link.
- c) Determining a satisfactory distribution of built form and floor space requires detailed consideration based on, in our opinion, a number of factors including, building separation, overshadowing, urban design, view corridors to and from the public domain and sensitive land uses, and amenity concerns such as acoustic and visual privacy. This is outlined in detail in the Stage 1 EIS and the Amending DA.

Whilst compliance with the APDG DCP would ‘provide a satisfactory building form’; it is by no means the only way that this could be achieved. This is demonstrated even more clearly when considering

that the LLCQ Tower is seeking to amend the controls, to achieve a different satisfactory building form. As such, whilst we acknowledge that the proposal may not be the only form which would satisfy this clause, it is the only form that significant testing has identified that can accommodate a World Class Hotel to function on the site, complying with the maximum height and FSR controls.

The proposal represents an appropriate distribution of floor space compared to alternatives which such as enlarging the Tower B footprint to accommodate the additional floor space now proposed within Tower A that results in the non-compliance with Clause 6.25(3). Enlarging Tower B would result in a much greater impact to surrounding land owners and the public domain than the very minor elevation extensions currently proposed.

4.2 THE UNDERLYING OBJECTIVE OR PURPOSE WOULD BE DEFEATED OR THWARTED IF COMPLIANCE WAS REQUIRED WITH THE STANDARD

Whilst not explicitly stated, the underlying purpose of Clause 6.25 is to consolidate the fragmented land holdings within the APDG precinct into several identified blocks, and concentrate the floor space potential of each into a single tall tower, with correspondingly lower building elements, open spaces, lanes and pedestrian linkages on the rest of the sites. The intent for consolidation is evident in both Clause 6.25(7) of the SLEP 2012 and Section 6.1.4 of the SDCP 2012.

While subclause 7 specifically envisages block 3 being expanded to include the Fairfax House and Rugby Club sites in accordance with this principle, if it is not possible to expand the floor plate of Tower A to accommodate some of the floor space potential of these sites, there would be little purpose in amalgamating them into the site.

Strict application of the 24% standard would thereby hinder a consolidated development of the enlarged block 3, thereby thwarting the underlying objective of the standard.

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

A recent decision in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* indicates that a variation must justify sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity. Commissioner Pain found that the grounds relied on for the variation was not particular to the circumstances of the proposed development on the particular site.

This Clause 4.6 Statement has been prepared in reference to a site specific clause, and as such by the very nature of the standard, the grounds for the variation are particularly to the circumstances of the proposed development (again noting that this is for a hotel development on this site, previously not considered by the controls) on this particular site.

The following environmental planning grounds are sufficient to justify contravening the standard and are particular to the circumstances of the development and the site:

- **The relatively minor contravention of the standard will facilitate the integration of the Goldfields House, Fairfax House and Rugby Club sites into a single co-ordinated redevelopment.**

Subclause 7 and Section 6.1.4 of the SDCP 2012 imply Council's site specific vision for consolidation of the blocks, this including the opportunity to add development Lots A and B to Block 3. The additional of these blocks changes the circumstances of the site by significantly increasing the site area.

- **Contravening the standard will facilitate the delivery of a co-ordinated public domain network on and through the three sites.**

A coordinated approach for the redevelopment of an amalgamated site has allowed an integrated public domain network across the three sites.

- **Contravening the standard will facilitate the delivery of a world class hotel on the site.**

The proposal includes a hotel use, granting the site additional FSR. The logical location of the additional FSR on the site is in Tower A, requiring the proposed minor contravention of the floor plate control.

- **Notwithstanding non-compliance with the site specific standard, the proposed 712sqm floor plate is still considerably smaller than the generic 1,000sqm control contained in Clause 5.1.4.2 of SDCP 2012 and with a maximum dimension of 27.5 metres is well below the generic 40 metre maximum control contained in Clause 5.1.4.2 of SDCP 2012.**

The reduced floor plate control is specific to the site as per Clause 6.25 of the SLEP 2012. A request for a variation based on a 712sqm floor plate would not be required where proposed on the majority of sites across the City as, at 55 storeys, the proposed footprint is a slender building form by any standard.

- **As demonstrated throughout the SEE, the enlarged floor plate will not result in any unreasonable additional environment effects, such as loss of views, privacy or sunlight from any surrounding residential property or public place.**

The amended proposed floor plate is appropriate for the site as the development will not result in any unreasonable additional environmental effects such as view loss, privacy or overshadowing. Notably no increase is now proposed to either of the western or eastern facades which arguably would have a greater sensitivity to properties to the south than the minor northern and southern extensions. As illustrated by the view impact analysis that accompanies this application, the proposed northern and southern projections do not result in any unreasonable view impact or overshadowing.

6. Will the proposed development 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

The proposed variation of the floor plate standard is consistent with the objectives of the B8 Metropolitan Centre zone as follows:

- *To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.*

The proposed variation will facilitate the provision of a world class hotel within a premier tourist location within of the city.

- *To provide opportunities for an intensity of land uses commensurate with Sydney's global status.*

The proposed variation will facilitate the realisation of the planned floor space potential of the site within a residential tower of the height envisaged within the APDG Precinct controls and a world class hotel building.

- *To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.*

The proposed variation will facilitate the replacement of a predominantly residential scheme, with one that is part residential, part tourist accommodation, with active lower level retail uses, thereby providing an increased diversity of land use that is more consistent with Sydney's global status.

- *To encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling.*

The proposed variation will facilitate the provision of a better integrated network of pedestrian linkages through the site, through a co-ordinated redevelopment of the enlarged site.

- *To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.*

The proposed variation will facilitate the provision of more active street frontages within the site, through a co-ordinated redevelopment of the enlarged site.

7. Whether or not non-compliance with the development standard raises any matter of significance for State or Regional environmental planning;

Non-compliance will facilitate the incorporation of a world class hotel of considerable significance to the State economy and the global status of Sydney. As the hotel (tourist related purpose) will exceed \$100 million capital investment value (CIV) it is defined as 'State Significant Development' under clause 13.2 of Schedule 1 of *State Environmental Planning Policy (State and Regional Development) 2011* (SEPP SRD).

8. The public benefit of maintaining the development standard.

Maintaining the floor plate standard would limit the ability to:

- Provide an integrated development of the three properties and
- Deliver a world class hotel on the site.

The proposed floor plate size complies with the standards generically applicable throughout the rest of central Sydney and no material public benefit would be provided by maintaining the standard.

9. Any other matters required to be taken into consideration by the Director General before granting concurrence.

Not applicable.

Conclusion

In conclusion, this request to vary the floor plate standard of Clause 6.25(3) of SLEP 2012 will facilitate a better planning outcome than that which has already been approved on the site in accordance with the standard. Specifically, the variation will facilitate:

- An integrated development of the enlarged block 3, including the Fairfax House and Rugby Club sites.
- A world class hotel on the site.
- An integrated pedestrian network across the enlarged block three.
- Expanded active frontages throughout the enlarged block three.
- No specific public benefit would arise from limiting the floor plate of Tower A, which at 712sqm is till considerably smaller than the generic 1,000sqm control contained in Clause 5.1.4.2 of SDCP 2012 and with a maximum dimension of 27.5 metres is well below the generic 40 metre maximum control contained in Clause 5.1.4.2 of SDCP 2012.

We therefore submit that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the standard.

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