



CLAUSE 4.6 REPORT

Apartment mix

SHOP TOP HOUSING

32-42 COOPER STREET STRATHFIELD

FEBRUARY 2026



QUALITY ASSURANCE

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| REPORT TYPE: | Clause 4.6 Report |
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| COUNCIL: | Canada Bay Council |
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Document Management

| Prepared by: | Revision: | Date: |
|--------------|--------------|----------|
| AB | Coordination | Feb 2026 |
| Reviewed by: | Revision: | Date: |
| AB | Final | Feb 2026 |

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OVERVIEW OF CLAUSE 4.6 DEPARTURE – APARTMENT MIX

Think Planners have prepared this Clause 4.6 variation request consistent with the *Guide to Varying Development Standards* (November 2023), published by the Department of Planning, Housing and Infrastructure.

The State Significant Development Application (SSDA), has been designed by DKO Architects, and assisted by numerous sub consultants. The SSDA is seeking consent for:

Shop Top Housing Tower comprising -

- *Site preparation works, including earthworks and tree removal*
- *Construction of the 21 storey mixed-use shop top housing tower including:*
 - o *Ground level commercial premises fronting Cooper Street and Clarence Street. These include 4 separate retail, 2 commercial premises and centre base child care facility.*
 - o *Residential units from level 1 through to level 20 consisting of 204 residential units.*
 - o *Residential access lobby from Cooper Street.*
 - o *7 level basement parking level accessed from Cooper Street.*
 - o *Service vehicle access from Cooper Street.*
 - o *Landscape works at ground level, level 9 communal level communal open space.*
 - o *Rooftop plant including solar panels and hot water system.*
 - o *Construction of public domain works.*
 - o *New footpaths.*
 - o *Hard and soft landscaping works.*
 - o *Subdivision.*

The proposal seeks to vary Cl. 6.11 Mix of dwelling sizes in residential flat buildings and mixed use development of Canada Bay Local Environmental Plan 2013. This Cl.4.6 Variation Request demonstrates that:

- It is unreasonable and unnecessary to comply with the development standard in this instance;
- Environmental planning grounds demonstrate that it is reasonable to vary the development standard;
- The proposal meets the objective the dwelling mix standard;
- The proposal is consistent with the objectives of Cl.4.6 in that the facilitation of the variation will deliver better outcomes for and from the development through the provision of much needed housing supply within an accessible location; and

- The proposal is consistent with the established and desired future character of the Homebush TOD Precinct, in particular the high rise living precinct.

Despite the non-compliance with the apartment mix standard, the departure assists in the delivery of housing, consistent with the following Objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal and apply the flexibility within Cl.4.6 of Canada Bay LEP 2013 to the apartment mix standard, given a better outcome is achieved for and from the development.

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THE SITE

The subject site is located 32-42 Cooper Street, Stratfield and is located on the south eastern corner of the Homebush TOD precinct Area.

The subject site shown below, is in a prime location where Strathfield station is 800m walking distance. The site has an area of 3,125m², with its predominant frontage to Cooper Street to the east. To the west of the site is the T9 Northern Heavy Rail line and beyond that the Homebush Train Station. To the north of the site are high density developments and the North Strathfield Heavy Rail Station and the new Metro. To the south west of the site is the Strathfield Heavy Rail Station and the Strathfield Town Centre.

Figure 1: Aerial Map of Subject Site (Source: Six Map)



PLANNING INSTRUMENT TO BE VARIED

This Clause 4.6 Variation Request seeks to vary *Canada Bay Local Environmental Plan 2013*

The site is zoned R4 High Density Residential under *Canada Bay Local Environmental Plan 2013*.

Shop top housing is permitted with consent in the R4 High Density Residential Zone.

DEVELOPMENT STANDARD TO BE VARIED

The Clause 4.6 Variation Request relates to the Cl.6.11 (3) Mix of dwelling sizes in residential flat buildings and mixed use development of *Canada Local Environmental Plan 2013*. This is a numeric development standard that stipulates the apartment mix of developments under Cl.6.11 (2) with at least 10 dwellings are to have

- 20% of dwellings as studio or 1 bedroom apartments and
- 20% to have at least three bedrooms.

An extract of Cl.6.11 is below:

- 1) *The objectives of this clause are as follows—*
 - a) *to ensure the provision of a mix of dwelling types in residential flat buildings and provide housing choice for different demographics, living needs and household budgets,*
 - b) *to promote development that accommodates a range of household sizes.*
- 2) *This clause applies to development for the following purposes that results in at least 10 dwellings—*
 - a) *residential flat buildings,*
 - b) *mixed use development that includes shop top housing.*
- 3) *Development consent must not be granted to development to which this clause applies unless—*
 - a) *at least 20% of the dwellings, to the nearest whole number of dwellings, in the development will be studio or 1 bedroom dwellings, and*
 - b) *at least 20% of the dwellings, to the nearest whole number of dwellings, in the development will have at least 3 bedrooms.*

THE VARIATION

As addressed above, the minimum dwelling mix is for developments with at least 10 dwellings:

- a) *at least 20% of the dwellings, to the nearest whole number of dwellings, in the development will be studio or 1 bedroom dwellings, and*
- b) *at least 20% of the dwellings, to the nearest whole number of dwellings, in the development will have at least 3 bedrooms.*

The proposed Apartment Mix for the project is

- 28 (14%) studio / 1 bedroom apartments
- 118 (58%) 2 bedroom apartments
- 58 (28%) 3 bedroom apartments

The variation is therefore 6% for the studio / 1 bedroom standard. While 28 studio / 1 bedroom apartments are proposed, an additional 12 studio / 1 bedroom apartments would be required to meet the 20% standard.
for apartments This equates to 12 apartments.

CLAUSE 4.6 OF CANADA BAY LEP 2013

Clause 4.6 of Canada Bay LEP 2013 provides that development consent may be granted for development even though the development would contravene a development standard. The objectives of clause 4.6 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.*

The operative provisions of the clause are as follows:

- 3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that —*
 - a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

- b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This document has been prepared in accordance with section 35B of the *Environmental Planning and Assessment Regulation 2021* to address the above requirements.

The key tests or requirements arising under clause 4.6 are as follows:

- 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*.
- There are planning grounds to warrant the departure, and these planning grounds are clearly articulated as reasons in arriving at a decision.

RELEVANT CASE LAW

Clause 4.6(3)(a) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances. The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6. Further, in *Initial Action* the Court confirmed that it is not necessary for a non-compliant scheme to be a better or neutral outcome and that an absence of impact is a way of demonstrating consistency with the objectives of a development standard. Therefore, this must be considered when evaluating the merit of the apartment mix departure. The five common methods for demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are:

- 1) Demonstrating that the objectives of the development standard is achieved, despite the non-compliance [42]
- 2) Establishing that the underlying objective or purpose is not relevant and compliance is therefore unnecessary [45]

- 3) Showing that the underlying objective or purpose would be defeated or thwarted if compliance required, confirming that compliance is unreasonable [46]
- 4) Establishing that the standard has been virtually abandoned or destroyed through council's own actions. Therefore given council's granting of consents that depart from the standard, compliance is unnecessary and unreasonable [47]
- 5) Demonstrating that the zoning of the land is unreasonable or inappropriate, meaning that compliance with the development standard is also unreasonable or unnecessary [48]

Of the five common methods above, this Cl.4.6 applies Method 1 of Wehbe.

ASSESSMENT

CL.4.6 (3) (A) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES

In accordance with the provisions of Cl.4.6(3)(a) 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 proposal, despite the numerical non-compliance identified, achieves the objectives as set out below:

| Objective | Discussion |
|---|---|
| <p>(a) <i>to ensure the provision of a mix of dwelling types in residential flat buildings and provide housing choice for different demographics, living needs and household budgets,</i></p> | <p>The proposal maintains a high degree of mix of apartment sizes and layout within the building, providing housing choice for a range of housing needs that will suit differing needs. The proposal provides 20 studio apartments, 8 one bedroom apartments, 118 two bedroom apartments and 58 three bedroom apartments. Substantial choice is provided in the proposal, including 4 different dwelling types.</p> <p>Planning research across Sydney has consistently identified a mismatch between unit supply and the needs of households, particularly for families and longer-term residents. Research undertaken by UNSW City Futures demonstrates that while families increasingly reside in apartments in well-located, higher-density areas, the predominance of small apartments has limited their ability to remain in these areas over time. Research has therefore found that genuine housing choice requires the provision of larger, adaptable dwellings capable of</p> |

accommodating changing household needs, rather than a reliance on studios and one-bedroom units primarily suited to short-term or transitional living.

This research highlights that housing diversity is best achieved through a range of functional dwelling sizes, including a meaningful proportion of two- and three-bedroom apartments, which can support couples, sharers, families with children and downsizers within the same development.

Market analysis and reporting further supports the need to moderate the supply of smaller apartments. This has found that there is need to rebalance supply and deliver a greater percentage of larger apartments close to transport, education and employment opportunities. Simply put, families and owner-occupiers seeking to remain in apartment locations [frequently struggle to find suitably sized dwellings](#), and that three-bedroom apartments, when delivered, demonstrate strong demand and longer tenure patterns.

The demand for additional bedrooms has been further reinforced by post-pandemic living arrangements, including working from home and multi-generational households, which require greater internal space and flexibility than can be provided by studios or one-bedroom units.

The proposed mix prioritises two- and three-bedroom apartments, which provide a broader and more durable form of housing choice across a range of demographics and household budgets. Two-bedroom apartments offer a balanced price point suitable for couples, sharers and small families, while three-bedroom apartments support family households and downsizers seeking to remain within the local area.

This approach recognises that affordability is not solely linked to dwelling size, but also to long-term suitability, adaptability and reduced household relocation costs. By increasing the supply of larger apartments and reducing reliance on very small dwellings, the proposal supports stable occupancy, improved amenity outcomes and a more socially sustainable residential environment.

It is further noted that existing planning policies exist which can deliver purpose build co-living apartments or BTR that can assist with the supply of smaller housing typologies for different market segments. Therefore, smaller housing typologies

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| | <p>are already adequately addressed in the planning system, with the proposal providing a balanced mix that meets community needs and housing expectations and demand.</p> <p>Whilst the proposed 1-bedroom mix is less than the rigid standard of the LEP, the proposal provides an appropriate mix of dwelling types. This ensures that there is appropriate supply in the Precinct of 1, 2 and 3-bedroom apartments and provides housing choice for different demographics and living needs, along with a mix that supports different price points which contributes to meeting different household incomes and budgets.</p> |
| <p>(b) <i>to promote development that accommodates a range of household sizes.</i></p> | <p>The proposal includes 28 x studio and 1-bedroom apartments, 118 x 2 bedroom apartments and 58 x 3+ bedroom apartments.</p> <p>With families increasingly becoming priced out of the dwelling house market, they are similarly increasingly looking to multi-bedroom apartment typologies in appropriate locations. Similarly, downsizers are competing with these families, with this demographic looking for less space but in a premium and low-maintenance housing product. The proposed mix of apartments within the development proposal accommodates a range of apartment sizes and, therefore, choice to accommodate the needs of individuals and families (i.e. a range of household sizes) who live in Strathfield.</p> |

CLAUSE 4.6 (3) (B) PLANNING GROUNDS

In Initial Action, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The following points demonstrate that sufficiently environmental planning grounds exist to justify contravening the apartment mix development standard and further demonstrates that the departure does not give rise to any environmental impacts. Council can be satisfied that the proposal is an appropriate design response for the subject site for the following reasons:

- The proposed dwelling mix, in the context of the subject site and locality, will achieve an object of the Environmental Planning and Assessment Act 1979, namely, to promote the orderly and economic use and development of land.
- The Proposal achieves the objectives of Cl.6.11 Mix of dwelling sizes in residential flat buildings and mixed use development, in that a diverse mix of housing is provided, giving choice to future residents, and different household budgets and sizes.
- The non-compliance is minor with an appropriate mix provided of 1 bedroom apartments, despite being an insignificant reduction below the prescriptive control.
- The non-compliance is not perceptible from the public domain and will have no amenity impacts on the public domain or adjacent residential properties.
- The non-compliance will not create any unacceptable impacts.
- Strict compliance with the prescriptive requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

Overall, the minor departure enables a better design outcome, consistent with the following Objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

Therefore, the current proposal is a preferred outcome from an environmental planning perspective and demonstrates that there is merit in varying the apartment mix control to achieve a better design response on the site which demonstrates sufficient environmental planning grounds to support the departure.

CONCLUSION

Strict compliance with the prescriptive dwelling mix standard is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the dwelling mix standard and is a compatible form of development that does not result in unreasonable environmental amenity impacts, being consistent with the existing and future character of development in the TOD Precinct.

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

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