

1-15 and 2-12 Conferta Avenue Rouse Hill (Tallawong
Station Precinct South Site)

Clause 4.6 – FSR Development Standard

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**1-15 AND 2-12 CONFERTA AVENUE ROUSE HILL
(TALLAWONG STATION PRECINCT SOUTH SITE)**

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1.0 CLAUSE 4.6 REQUEST – FSR

1.1 Introduction

The subject site benefits from a Concept Plan (SSD 9063) which was approved on 21 February 2019 for a mixed-use precinct, known as Tallawong Station Precinct South, including:

- building envelopes for up to 16 buildings of varying heights, to a maximum of eight storeys
- maximum gross floor area (GFA) of 93,393 m²
- residential development of up to 1,100 dwellings equating to approximately 85,000 m² GFA
- commercial, retail and community uses of approximately 9,000 m² GFA
- allocation of car parking and bicycle parking rates
- minimum 5% Affordable Housing
- landscaping of the site for public and private domain including a public park (approximately 3,411 m²)
- road layout.

Following approval of the Concept Plan, Landcom conducted a Call for Expressions of Interest (EOI) to potential development partners to deliver the project. Following the EOI stage, a shortlist of developers were invited to participate in a competitive tender and Deicorp was awarded the contract due to its strong track record in residential and mixed use developments, to create new places for communities to live, work, shop and play. Deicorp are responsible for securing the necessary development consent (guided by the approved Concept Plan) and for the construction and delivery of the project

The Concept Plan SSD 9063 was approved with a Gross Floor Area of 93,393 square metre and based on the site area of 70,424 square metres resulted in a Floor Space Ratio of 1.33:1 which is well below the maximum control of 1.75:1. However, since approval of the Concept Plan SSD 9063, civil works have been undertaken and Themeda Avenue and Conferta Avenue have been dedicated to Blacktown City Council which has resulted in a reduction to the site areas as defined by Clause 4.5 of the SEPP for Site 1 and Site 2 when compared to the Concept Plan site.

As a result, whilst the proposed development has a total gross floor area of 93,392 square metres which is slightly less than the approved maximum under the Concept Plan SSD 9063, by definition the FSR for each respective site exceeds 1.75:1 as a result of a reduction to the site area, as illustrated in the table below.

Site	Area	GFA	FSR	Variation
Concept Plan SSD 9063				
	70,424 square metres	93,393 square metres	1.33:1	N/A
Proposed Development				
1	16,240 square metres	37,525 square metres	2.31:1	0.56:1 or 32%
2	27,030 square metres	55,867 square metres	2.067:1	0.317:1 or 18%
Total		93,392 square metres		

This request for an exception to a development standard is submitted in respect of the development standard contained within Clause 4.4 of Appendix 6 of the State Environmental Planning Policy (Sydney Growth Centres) 2006. The request relates to a State Significant Development Application for the construction of a staged mixed use development comprising residential apartments, commercial and retail uses, public domain works and landscaping including a publicly accessible park, new road and land and stratum subdivision at 1-15 and 2-12 Conferta Avenue, Rouse Hill (Tallawong Station Precinct South site) (SSD 10425)



Figure 1:

Site plan for
 Concept
 Plan SSD
 9063
 (Source:
 Landcom)

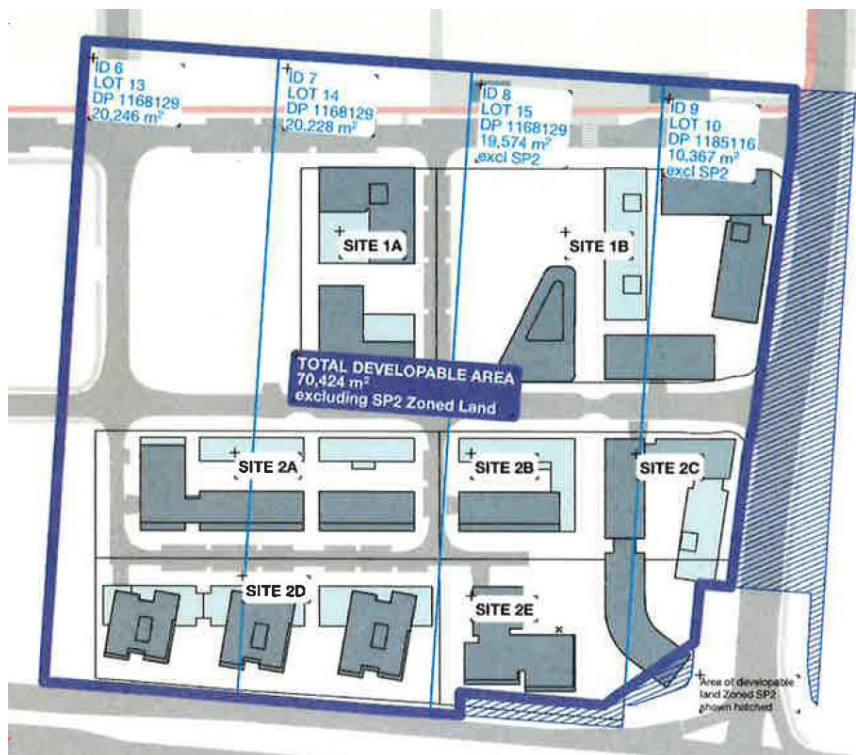


Figure 2:

Overlay of
 Concept
 Plan building
 envelopes
 with site plan
 (Source:
 Bennett &
 Trimble
 Urban
 Design
 Report)

1.2 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of Appendix 6 of State Environmental Planning Policy (Sydney Growth Centres) 2006 provides that development consent may be granted for development even though the development would contravene a development standard imposed by State Environmental Planning Policy (Sydney Growth Centres) 2006, or any other environmental planning instrument.

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the FSR development standard be varied.

1.3 Development Standard to be varied

Clause 4.4 of Appendix 6 of State Environmental Planning Policy (Sydney Growth Centres) 2006 states:

- (1) The objective of this clause is to control the bulk and scale of buildings within the Area 20 Precinct by setting maximum floor space ratios for development.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Floor space ratio is defined under Clause 4.5 of Appendix 6 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 as:

“the ratio of the gross floor area of all buildings within the site to the site area.”

The maximum floor space ratio shown for the land on the Map for the site to which the proposed development relates is 1.75:1 in area ‘S’.

1.4 Extent of Variation to the Development Standard

The Concept Plan SSD 9063 was approved with a Gross Floor Area of 93,393 square metre and based on the site area of 70,424 square metres resulted in a Floor Space Ratio of 1.33:1 which is well below the maximum control of 1.75:1.

However, since approval of the Concept Plan SSD 9063, civil works have been undertaken and Themeda Avenue and Conferta Avenue have been dedicated to Blacktown City Council which has resulted in a reduction to the site areas as defined by Clause 4.5 of the SEPP for Site 1 and Site 2 when compared to the Concept Plan site.

As a result, whilst the proposed development has a total gross floor area of 93,392 square metres which is in fact slightly less than the approved maximum under the Concept Plan SSD 9063, by definition the FSR for each respective site exceeds 1.75:1 as a result of a reduction to the site area, as illustrated in the table below

Site	Area	GFA	FSR	Variation
1	16,240 square metres	37,525 square metres	2.31:1	0.56:1 or 32%
2	27,030 square metres	55,867 square metres	2.067:1	0.317:1 or 18%

1.5 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In addition, in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This request addresses the first test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

The specific objective of the floor space ratio development standard, as specified in clause 4.4 of Appendix 6 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 is identified below. A comment on the proposal's consistency with the objective is also provided.

(1) The objective of this clause is to control the bulk and scale of buildings within the Area 20 Precinct by setting maximum floor space ratios for development.

The approval of the Concept Plan recognised that the density proposed across the overall site was compliant with the density permitted pursuant to State Environmental Planning Policy (Sydney Region Growth Centres) 2006, and in fact significantly below the 1.75:1 FSR control.

The density proposed in the subject development is essentially identical (albeit 1 square metre less) with the density approved under the Concept Plan, and the proposed FSR variations only arise as a consequence of the site areas reducing due to the earlier completion and dedication of some of the roads within the Concept Plan area to Blacktown City Council.

The proposed distribution of built form and massing of the buildings across the site is consistent with that which has been approved under the Concept Plan, with some minor changes and improvements to the building envelopes. The approved building envelopes are the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome. The cornerstone of this approach to the site is to provide a diversity of housing product across the Concept Plan area and a

collection of various residential and mixed use building typologies and scale. This serves to generate a high level of visual interest with modulation to the skyline and meets the various housing needs of the community with housing to suit families through to single occupants.

The bulk and scale of the proposed development is consistent with that which is anticipated for the site by the Concept Plan.

The approval of the Concept Plan recognised the environmental capacity of the overall site having regard to its favourable location in proximity to public transport. The proposed development is consistent with the density of development approved under the Concept Plan as well as the desired future character for the subject site and will sit comfortably within the context of the site with no significant adverse impacts to adjacent properties or the public domain.

As the proposal is consistent with the objective of the FSR control, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

1.6 Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development

There are sufficient environmental planning grounds to justify contravening the development standard:

- The approval of the Concept Plan SSD 9063 recognised that the density proposed across the overall site was consistent with the density permitted pursuant to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 The density proposed on the two subject sites is entirely consistent with the density approved under the Concept Plan SSD 9063.
- The proposed distribution of built form and massing of the buildings across the site is the result of a considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will deliver a diversity of housing and commercial product across the Concept Plan area and a collection of various residential building typologies and scale.
- The proposal will deliver a high quality development in close proximity to public transport that will increase the vibrancy of the precinct.
- The proposal is consistent with the desired future character outlined within Blacktown City Council Growth Centres Precinct Development Control Plan 2010 for the subject site and the Area 20 Precinct (Cudgegong Road Station) generally.
- The density proposed does not prevent achievement of the 9 principles of SEPP 65.

- There are no unacceptable adverse impacts in terms of shadow, view, visual and acoustic privacy impacts resulting from the proposed variation to the floor space ratio development standard which would warrant strict compliance.
- The proposed density will not result in an acceptable impact on local traffic conditions.
- The proposed variation allows for the most efficient and economic use of the land.
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context

The objects specified in section 5(a)(i) and (ii) of the EP&A Act are:

‘to encourage:

- i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- ii) the promotion and co-ordination of the orderly and economic use and development of land..’

The proposed development is consistent with the aims of the Policy and the objects of the EP&A Act in that:

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Strict compliant with the FSR control would result in an unreasonable reduction in the appropriate density for the site which has already been established by the Concept Plan approval.
- The proposed variation allows for the most efficient and economic use of the land.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed FSR non-compliances in this instance.

1.7 [Clause 4.6\(4\)\(a\)\(i\) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6\(3\)](#)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in Wehbe v Pittwater Council [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

1.8 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will 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.

Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives.

The objectives of the B4 Mixed Use zone are:

- 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 facilitate active retail, commercial, entertainment and community uses at ground level of mixed use developments.
- To provide for residential development that contributes to the vitality of the local centre.
- To ensure that residential development adjacent to the local centre does not detract from the primary function of the centre being to provide for retail, business, entertainment and community uses.

The proposed development facilitates a mixture of retail and business uses in a highly accessible location immediately adjacent to the Tallawong Station which will which will maximise public transport patronage and encourage walking and cycling for the local community. This is especially relevant for the existing nearby community of The Ponds because its residents have previously needed to travel by car to access convenience retailing, and the proposed development will provide such services within walking distance. Residential apartments are integrated with the retail and business premises offering and will ensure a critical mass of occupants is achieved to ensure a vibrant outcome for the site. For the reasons given the proposed development of Site 1 is considered to be consistent with the objectives of the B4 Mixed Use zone.

The objectives of the R3 Medium Density Residential zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To support the well-being of the community by enabling educational, recreational, community, religious and other

activities where compatible with the amenity of a medium density residential environment

The proposed development of Site 2 provides for residential accommodation in the form of residential flat buildings which provide for the housing needs of the community within a medium density residential environment. For the reasons given the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone

1.9 Clause 4.6(5) Secretary Considerations

The matters for consideration under Clause 4.6(5) are addressed below:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(b) the public benefit of maintaining the development standard,

This Clause 4.6 request has demonstrated there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard.

1.10 Objectives of Clause 4.6

The specific 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.

As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 4.3 notwithstanding the proposed variation to the maximum FSR development standard.

The proposed FSR variation only arises as a consequence of the definition of site area which has reduced since the approval of the Concept Plan as a result of the construction and dedication of roads to Blacktown City Council. The proposed density does not exceed that which has been established by the Concept Plan and the proposed variation is consistent with the objective of Clause 4.6 to provide an appropriate degree of flexibility in applying certain development standards.

1.11 Conclusion

Strict compliance with the FSR development standard contained within clause 4.4 of Appendix 6 of State Environmental Planning Policy (Sydney Growth Centres) 2006 has been found to be unreasonable and unnecessary in the circumstances of the case. In addition, there are sufficient environmental planning grounds to justify the proposed variation which is in the public interest. In this regard it is reasonable and appropriate to vary the FSR development standard to the extent proposed.