

**University of Technology, Sydney
UTS Blackfriars New Research Building**

**UTS Blackfriars Precinct
2-14 Buckland Street, Chippendale NSW**

**Clause 4.6 Request to Vary a Development Standard:
(Clause 4.4 Floor Space Ratio)**

Prepared by Urbanac for the University of Technology Sydney
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Contents

Part 1	Request to Vary a Development Standard	2
1.1	Purpose	3
1.2	Sydney Local Environmental Plan 2012 – Clause 4.6	3
1.3	Development standard to which variation is sought	4
1.4	Variation sought	4
1.5	Land and Environment Court five part test	4
Part 2	Variation to Clause 4.3 – Floor space ratio	5
2.1	Floor space ratio – development standard	5
2.2	Consistency with the objectives for the development standard	5
2.2.1	Objective 1a – To provide sufficient floor space to meet anticipated development needs for the foreseeable future	5
2.2.2	Objective 1b – To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic and	6
2.2.3	Objective 1c – To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure	6
2.2.4	Objective 1d – To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality	7
2.3	Consistency with the objectives for development within the zone	8
2.4	Justification for development standard variation	8
2.5	Concurrence of the Secretary	10
2.5.1	Matters of significance for State or regional environmental planning	10
2.5.2	The public benefit of maintaining the development standard	11
2.6	The Land and Environment Court Five Part Test	12
2.7	The Public Interest	12
Part 3	Conclusion	13

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Part 1 Request to Vary a Development Standard

1.1 Purpose

This is a request in accordance with Sydney LEP 2012 Clause 4.6 to vary the Floor Space Ratio development standard established by Clause 4.4 in support of a staged development application for a building envelope for the UTS Blackfriars New Research Building at 2-14 Buckland Street, Chippendale NSW (the Proposal). The request has been prepared with regard to *Varying Development Standards: A Guide* (Department of Planning & Infrastructure, August 2011).

1.2 Sydney Local Environmental Plan 2012 – Clause 4.6

Sydney Local Environmental Plan 2012, extract

4.6 Exceptions to development standards

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

- (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.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) 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 circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) 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, and*

(b) the concurrence of the Secretary has been obtained.

(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, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

1.3 Development standard to which variation is sought

Clause 4.4 provides for the maximum floor space ratio. The floor space ratio map shows the maximum floor space ratio for a building on the subject site as 1.25:1. This request seeks to vary that development standard for the Proposal.

1.4 Variation sought

This request seeks to vary the maximum floor space ratio development standard in relation to the Proposal to be 1.5:1. The increase in sought is 0.25:1.

With a site area of 6,043m², the variation seeks to increase the permissible maximum floor space area for buildings on the site from 7,554m² to 9,065m², an increase of 1,511m².

1.5 Land and Environment Court five part test

Varying Development Standards: A Guide (Department of Planning & Infrastructure, August 2011) states that there are 5 considerations when assessing a variation to a standard, based on Land And Environment Court cases. These include:

1. Objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary;
3. The underlying object of the purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the stand and hence compliance with the standard is unnecessary and unreasonable;
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land that is, the particular parcel of land should not have been included in the zone.

Each of these considerations has been addressed as part of this request for variation.

Part 2 Variation to Clause 4.3 – Floor space ratio

This part demonstrates that despite the non-compliance with floor space ratio development standard, the Proposal meets the underlying objectives of the standard.

2.1 Floor space ratio – development standard

The underlying objects of the floor space ratio development standard are given in Clause 4.4(1):

4.4 Floor space ratio

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

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

2.2 Consistency with the objectives for the development standard

2.2.1 Objective 1a – To provide sufficient floor space to meet anticipated development needs for the foreseeable future

The Draft Metropolitan Strategy 2031 gives out the Government's vision, goals and actions for Sydney and sets the strategic context for the Sydney's development needs for the foreseeable future. The Proposal is well aligned to the Draft Metropolitan Strategy for Sydney 2031 goals and priority areas including:

- *Grow a more internationally competitive Sydney CBD*
- *Expand the Global Economic Corridor*
- *Grow strategic centres – providing more jobs closer to home*
- *Support priority economic sectors*

The Strategy includes priorities for each subregion in Sydney. The Central subregion spans central Sydney, the eastern suburbs and the inner west of Sydney and includes the CBD setting out development needs in these areas for the foreseeable future. It's priorities for the Global Sydney strategic centre, include:

Broadway and Camperdown Education and Health Precinct

- *Support education-related land uses and infrastructure around Sydney University, University of Technology Sydney, and Notre Dame University.*

Pymont-Ultimo

- *Work with the City of Sydney to... support the land use requirements of the creative digital technology knowledge hub in Pymont-Ultimo.*

The Proposal is located in the global economic corridor, and adjacent to the creative digital technology knowledge hub, and as a result directly addresses these strategic needs for anticipated development into the future.

The Proponent has carefully considered the issue of whether the LEP provides sufficient floorspace to support its anticipated development needs in alignment with the Government's Metropolitan and Sub-Regional planning.

UTS receives regular requests for space from research partners. The University's vision is that the Blackfriars Precinct would allow it to partner with research entities and industry to develop new technologies, new business ventures and new jobs. The university's experience is that industry partners require a minimum of 1,000 square metres with larger floor space requirements also common. This minimum is then combined with aligned University research space and collaboration space. The University considers that a building in the order of 6,000-6,500m² is the right size to attract industry partners at a range of sizes, while at the same time providing essential university and collaboration space. This is considered to be the minimum in order to create a critical mass of research partnership organisations working collaboratively while still allowing flexibility about uptake of space as research projects develop.

UTS considers that a building of 4,700m², which would be compliant with the floor space ratio development standard, would not be at a sufficient scale to yield material benefits to the University, the State or the City. A larger industry partner could dominate a building of that size and opportunities for attracting new industry to the City and the State together with cross industry and cross discipline collaboration would be lost. A larger area is therefore key to the success of a collaborative industry research centre at UTS.

As a result, it is submitted that the development standard expressed in the LEP does not allow for sufficient floor space to meet anticipated development needs for the foreseeable future. Accordingly, it is submitted that requiring compliance with the development standard would have the effect of undermining the objective of the development standard.

2.2.2 Objective 1b – To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic and

2.2.3 Objective 1c – To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure

For at least fifteen years prior to the making of Sydney LEP 2012, the relevant permissible floor space ratio for the site under the South Sydney Development Control Plan 1997 was 1.5:1. As a result, the density of development and land use intensity as varied by the Proposal, will be consistent with and in keeping with majority of development in the area delivered over that period under that planning control.

The quality of the built form of the Proposal will make a positive contribution to the visual amenity and character of the streetscape, making appropriate use of this accessible site and utilising existing infrastructure

The Traffic and Accessibility Assessment by Parking and Traffic Consultants (PTC) prepared as part of the EIS found that the realistic peak hour traffic generation of the Proposal would be 60 to 65 vehicles/hour, distributed to the on-street parking along various roads within Blackfriars Precinct as well as to the three (3) car parks within Broadway Precinct, resulting in a thinly spread traffic volumes of not more than 10 vehicles/hour on any one street, significantly less than the general daily

variation. As a result the Assessment concluded that there is only a negligible traffic impact arising from this proposed development and that it will not cause any notable impact upon the operation of overall road network.

The additional floor space area being sought is approximately one quarter of the overall area of the Proposal. As a result it can be concluded that the traffic apportioned to the variation in floor space area equates to only 2.5 vehicles per hour, which would be undetectable above the background. Similarly, at building staffing density one person per 12-20m², the additional floor area sought will add only 75-125 building users to the neighbourhood, typically spread out over a range of arrival and departure times, and having only a negligible impact on the area's existing pedestrian infrastructure.

In addition the Proposal does not include off-street parking, as a result of the site location being adjacent to high frequency public transport and existing UTS and other parking facilities. The site is well serviced by public transport, including the numerous bus services that operate along Broadway and Central Railway Station, which is located within a 10 to 15 minute walking distance from the site. The Traffic and Accessibility Assessment by Parking and Traffic Consultants (PTC) prepared as part of the EIS notes found that this will assist in reducing the traffic activity associated with the building, and any associated impact on neighbours' amenity, as well as satisfying the Secretary's Environmental Assessment Requirements (SEARs) to encourage the use of alternative transport. This is also in accordance with the Sydney LEP 2012, which specifies maximum parking for development, but no minimum provision.

2.2.4 Objective 1d – To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality

UTS has a strong record of respecting the site's heritage. It has invested significant funds in the removal of low-grade infill buildings that have detracted from the heritage significance of the school buildings as well as in the conservation of the school buildings themselves. As a long-term custodian of this site, UTS understands the cultural significance of maintaining and growing an educational presence in a site that has had an educational focus for over 130 years.

The Sydney DCP 2012, whilst not strictly applicable to State significant development, nevertheless provides a locality statement expressing the desired future character of areas. It states, in relation to Chippendale (Section 2.3.1): *The scale of housing and adapted warehouse buildings is generally low to medium rise with the exception of the blocks fronting Parramatta Road and Regent Street where early to mid 20th century taller office buildings and warehouses dominate.*

Occupying part of the Block Fronting Parramatta Road (Broadway) the Proposal takes the form of a medium rise contemporary building that responds to the scale and form of nearby warehouses. It is a new infill building that reinforces the predominant street frontages in terms of height, setbacks and street alignment. It also responds to the height, massing and predominant proportions of the sites heritage and contributory items.

The Heritage Report by Paul Davies Pty Ltd, which accompanies the EIS for the Proposal, is supportive of the Proposal in heritage terms concluding the "development on the northern portion of the site is possible without adversely

affecting heritage values or the urban setting of the school within the surrounding area”.

As a result, it is submitted that the Proposal reflects the desired future character of the locality in which it is located and minimises impacts on the amenity of that locality.

2.3 Consistency with the objectives for development within the zone

The objectives for the B4 Mixed Use zone are:

Zone B4 Mixed Use

1 Objectives of zone

- *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 ensure uses support the viability of centres.*

The Proposal is consistent with the objectives of the zone as follows:

- The education establishment use on the site is permissible. It is also compatible with nearby education, commercial, residential, childcare and other uses and maintains a 130 year long use of the site as an education precinct.
- The Proposal integrates suitable educational development in close proximity to the major public transportation bus corridor on Broadway and in close proximity to major railway interchange stations, and minimises carparking and private vehicle uses by not providing carparking on the site, thereby maximising public transport patronage and encouraging walking and cycling.
- The Proposal supports the viability of centres by providing employment in for the Global Sydney strategic centre, with a specific focus on education-related land uses focussed towards job creation, innovation, and new business activity in the creative digital technology sector, as identified as priorities within the Central sub-regional strategy of the Draft Metropolitan Strategy for Sydney. Specifically, the estimate of jobs created by the development is 300 full time equivalent research positions. The likely multiplier effect for research jobs is recognised as amongst the highest for any sector, and has been estimated at a four, meaning that the Proposal is will lead to a further 1,200 jobs in the local economy.

2.4 Justification for development standard variation

The following table provides a justification for the proposed varying the development standard, based on the above planning provisions:

Table 1 Justification for proposed variation

Clause 4.6 (3) objection	Justification
<i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case</i>	<p>Compliance with the development standard is considered to be unnecessary for the following reasons:</p> <ul style="list-style-type: none"> • the Proposal is in accordance with each of the underlying objects of the standard despite its non-compliance.

Clause 4.6 (3) objection	Justification
<p>that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>The following provides planning grounds to justify contravention of the development standard:</p> <ul style="list-style-type: none"> 6,000-6,500m² is considered to be the minimum size for the proposed facility in order to create a critical mass of research partnership organisations working collaboratively while still allowing flexibility about uptake of space as research projects develop. As a result, additional floor space is sought to ensure the viability of the facility in addressing the zone objectives to support the viability of centres, and to integrate suitable development in accessible locations so as to maximise public transport patronage and encourage walking and cycling, and to ensure that sufficient floor space is provided to meet anticipated development needs for the foreseeable future. The Proposal contributes to the desire future character of the area as expressed by the DCP, by providing a medium rise contemporary building that responds to the scale and form of nearby warehouses, and reinforcing the predominant street frontages in terms of height, setbacks and street alignment. It also responds to the height, massing and predominant proportions of the site's heritage and contributory items. The Proposal directly addresses strategies contained in the Government's NSW 2021 in particular <i>Rebuild the Economy</i>. It directly contributes to targets and priorities of Goal 1 - <i>Improve the performance of the NSW economy</i>, by leveraging research and development activities to drive new investment opportunities in NSW, and growing critical industries including digital economy and international education and research. It also directly contributes to targets and priorities of Goal 4 - <i>Strengthen the NSW skill base</i>, by growing knowledge industries, and supporting high performing businesses to innovate to further enhance productivity within key sectors of the digital economy, and education and research. The Proposal directly addresses the Draft Metropolitan Strategy 2031 priorities to create new and innovative opportunities to grow Sydney CBD office space by identifying redevelopment opportunities and increasing building heights in the right locations, grow high-skilled jobs in the Global Economic Corridor by expanding employment opportunities and mixed-use activities, and support the growth of priority industries with appropriate planning controls. The Proposal is designed to specifically contribute to the Draft Metropolitan Strategy's Central Subregion priorities for <i>Broadway and Camperdown Education and Health Precinct</i> by providing education-related land uses and infrastructure around the University of

Clause 4.6 (3) objection	Justification
	<p>Technology, Sydney.</p> <ul style="list-style-type: none"> The Heritage Report by Paul Davies Pty Ltd, which accompanies the EIS for the Proposal, is supportive of the Proposal in heritage terms concluding that the “development on the northern portion of the site is possible without adversely affecting heritage values or the urban setting of the school within the surrounding area”. Minor additional overshadowing arising from the increased building size still provides for reasonable solar access for residents in adjacent development in accordance with the requirements of the Apartment Design Guidelines and SEPP65 (discussed in full in the EIS at Section 6.7). The proposed development is compatible with the existing and future character of the locality, and is consistent with the zoning for the area.

It is submitted that in the circumstances of the case, the application of the development standard is unnecessary and unreasonable because the Proposal is in accordance with each of the underlying objects of the standard despite its non-compliance and that the departure from the development standard is well justified on environmental planning grounds.

2.5 Concurrence of the Secretary

The concurrence of the Secretary is required under Clause 4.6(5) in relation to the granting of consent that contravenes a development standard. In deciding whether to grant concurrence, the Secretary must consider whether contravention of the development standard raises any matter of significance for State or regional environmental planning and the public benefit of maintaining the development standard.

2.5.1 Matters of significance for State or regional environmental planning

The proposed development raises the following matters of significance for State and regional environmental planning:

- The proposed development is declared as State Significant by State Environmental Planning Policy (State and Regional Development) in accordance with *Section 8 Declaration of State significant development*. The proposed development is specified in *Schedule 1 State significant development—general: 15 Educational establishments: “Development for the purpose of educational establishments (including associated research facilities) that has a capital investment value of more than \$30 million”*.
- The Proposal directly addresses strategies contained in the Government’s NSW 2021 in particular *Rebuild the Economy*. It directly contributes to targets and priorities of Goal 1 - *Improve the performance of the NSW economy*, by leveraging research and development activities to drive new investment opportunities in NSW, and growing critical industries including digital economy and international education and research. It also directly contributes to targets and priorities of Goal 4 - *Strengthen the NSW skill base*, by growing knowledge industries, and supporting high performing businesses to innovate to further enhance productivity within key sectors of the digital economy, and education and research. The jobs created by the development are estimated at 300 full

time equivalent research positions. The likely multiplier effect for research jobs is recognised as amongst the highest for any sector, and has been estimated at a four, meaning that the Proposal will lead to a further 1,200 jobs in the local economy.

- The Proposal directly addresses the Draft Metropolitan Strategy 2031 priorities to create new and innovative opportunities to grow Sydney CBD office space by identifying redevelopment opportunities and increasing building heights in the right locations, grow high-skilled jobs in the Global Economic Corridor by expanding employment opportunities and mixed-use activities, and support the growth of priority industries with appropriate planning controls.
- The Proposal is designed to specifically contribute to the Draft Metropolitan Strategy's Central Subregion priorities for *Broadway and Camperdown Education and Health Precinct* by providing education-related land uses and infrastructure around the University of Technology Sydney.

It is submitted that the Proposal could not proceed without the flexible application of the development standard. This would result in the loss of the benefits flowing from the Proposal to the State and local economy, and delay or frustrate delivery of the Draft Metropolitan Strategy's and Central Subregion's priorities.

2.5.2 The public benefit of maintaining the development standard

It is considered that there is no public benefit to maintaining the development standard in the specific circumstances for the following reasons:

- The varying of the development standard does not give rise to any significant adverse environmental impacts.
- As the Proponent, UTS, is a public institution, the benefits generated by the Proposal are accordingly public.
- Maintaining the development standard would result in UTS abandoning the Proposal because it does not consider it to be viable at a smaller size. This would mean that the Proposal may never be built, or may be delayed for a significant period of time until a more suitable site can be procured at a reasonable price, which is highly unlikely in the current market. This would result in loss of the public benefits arising out of the Proposal's jobs, revenue, and research and development in priority industries to the City and the State. There is also a very real risk that the opportunity for such a centre could be lost to other institutions including competitor institutions outside NSW.
- For at least fifteen years prior to the making of SLEP2012, the relevant permissible floor space ratio for the site under the South Sydney Development Control Plan 1997 was 1.5:1.
- There is no further development planned or possible on the balance of the site due to its heritage buildings and the recent approval of the single storey childcare at the south end of the site, ensuring a long term high quality setting for the heritage buildings on the site and a certainty of built form for the longer term for the site and its setting in Chippendale.
- It is considered that varying the development standard will not have the effect of eroding the development standard because the Chippendale area is already substantially developed at the maximum floor space ratio with further redevelopments unlikely to be able to demonstrate a similar public benefit in terms of job creation in the State's priority industries, alignment with the priorities of the Draft Metropolitan Strategy and Central Sub-Regional Strategy, or having the clear public benefit arising from the Proponent being a public education institution.

2.6 The Land and Environment Court Five Part Test

The following table sets out a response to the questions in the five part test.

Table 2 LEC Five Part Test

LEC five part test	Response
Objectives of the standard are achieved notwithstanding non-compliance with the standard	The Proposal is in accordance with each of the underlying objects of the standard despite its non-compliance. Refer to section 2.2 above
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary	N/A
The underlying object of the purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	The underlying objective of the development standard to “to ensure that sufficient floor space is provided to meet anticipated development needs for the foreseeable future” would be defeated or thwarted if compliance was required. As a result, compliance is considered unreasonable.
The development standard has been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the stand and hence compliance with the standard is not unnecessary and unreasonable	N/A
The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land that is, the particular parcel of land should not have been included in the zone	N/A

2.7 The Public Interest

It is submitted that the Proposal is in the public interest because it is consistent with the objectives for the development standard being varied, and the objectives for development within the zone in which the Proposal is proposed to be carried out in accordance with Clause 4.6(4)(ii) (refer to Part 2.2 and 2.3 of this request).

Part 3 Conclusion

This request for a variation to the development standard satisfies the matters of consideration under Clause 4.6 of Sydney LEP 2012 and demonstrates that the variation to the floor space ratio development standard is appropriate in the circumstance of the case.

The request demonstrates that the proposed variation to the development standard:

- Satisfies the stated and underlying objectives of the development standard
- Achieves better outcomes for and from the proposed development
- Meets the LEC five part test.

It is submitted that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. This is discussed in Part 2.4 of this request.

It is submitted that the Proposal is in the public interest because it is consistent with the objectives for the development standard being varied, and the objectives for development within the zone in which the proposal is proposed to be carried out in accordance with Clause 4.6(4)(ii). These are discussed in Part 2.2 and 2.3 of this request.

The proposed development raises several matters of significance for State and regional environmental planning requiring the concurrence of the Secretary under Clause 4.6(5), including that the Proposal:

- is State Significant development by a Public Authority (UTS)
- achieves specific priorities set out in the Draft Metropolitan Strategy and Central Subregional Strategy

It is submitted that the varying of the development standard in this particular case achieves the underlying intent of the LEP as it achieves better outcomes for and from the proposed development by allowing flexibility in the particular circumstances.

As this objection to the development standard is well founded, it is requested that the consent authority applies flexibility to the application of the floor space ratio development standard and grants consent to the Proposal in accordance with Clause 4.6(2) of Sydney LEP 2012.