

Exception to a Development Standard Fact Sheet

Made under clause 4.6 of the Randwick Local Environmental Plan 2012



APPLICATION/REFERENCE NUMBER:

DATE:

ABOUT THIS FORM

This fact sheet is a guide to addressing Clause 4.6 of the Randwick Local Environmental Plan (LEP) 2012.

Clause 4.6 is required to be addressed if a development application seeks to vary a development standard in the Local Environmental Plan. The consent authority (Council) must not grant consent for development that contravenes a development standard unless, a written request has been provided by the applicant addressing Clause 4.6 of the LEP.

If Council is satisfied that your Clause 4.6 request is adequately justified, it may grant consent to the development even though the proposal does not comply with the relevant standard. In some cases, concurrence of the Director-General of the Department of Planning may be required

Clause 4.6 can either be addressed as a part of your Statement of Environmental Effects or in a separate document attached to this fact sheet.

Note: you do not need to lodge this fact sheet if Clause 4.6 is adequately addressed in your SEE

APPLICANT DETAILS

Title: Mr Mrs Ms Other:

Applicant's Name:

PROPERTY/LOCATION DESCRIPTION

Unit/Street No: Street:

Suburb: Post Code:

Lot No(s): Strata/Deposited Plan Number(s):

DESCRIPTION OF PROPOSAL

.....
.....

WHICH DEVELOPMENT STANDARD/S ARE YOU SEEKING TO VARY

Clause 4.1 Subdivision Clause 4.3 Building Heights Clause 4.4 Floor Space Ratio
 Other (please specify)

GET IN CONTACT

Randwick City Council
30 Frances Street
Randwick NSW 2031
ABN: 77 362 844 121

Phone 1300 722 542
council@randwick.nsw.gov.au
www.randwick.nsw.gov.au

PROPOSED VARIATIONS

The LEP Standard (eg. Height - 8.5m)	The Proposal (eg. 9.5m)	Proposed Variation (eg. 1m over height limit)	Proposed variation as a percentage (eg. 12%)

MATTERS TO BE ADDRESSED WITHIN YOUR CLAUSE 4.6 SUBMISSION

In accordance with Clause 4.6(3) of the LEP, the applicant must submit a written request for consideration by Council which justifies the contravention of the development standard by demonstrating:

- 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.

A separate prepared statement must be submitted which addresses ALL of the following matters:

1. Justify why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
2. Demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard
3. Explain how the proposed development will be in the public interest, referring to:
 - a. The objectives of the particular standard, and
 - b. The objectives of the zone where the development is proposed
4. Identify whether contravention of the development standard will raise any matter of significance for state or regional planning?
5. Detail why there is no public benefit in maintaining the development standard.

If ALL of the above matters are not sufficiently addressed, Clause 4.6 cannot be satisfied.

Appendix 1 attached to this form provides a template that may be used to show how the above matters are addressed.

HOW TO LODGE YOUR CLAUSE 4.6 SUBMISSION

Please lodge your Clause 4.6 submission with your Development Application either:

- As a separate document attached to this factsheet; OR
 - within your Statement of Environmental Effects (SEE)
- Note: you do not need to lodge this fact sheet if all Clause 4.6 details are contained in your SEE

OFFICE USE ONLY

Received by: Date:

Referred to: Date:

1. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Chief Justice Preston of the NSW Land and Environment Court has identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (refer to *Wehbe v Pittwater Council* [2007] NSWLEC 827).

In the *Wehbe* case, Justice Preston said the most commonly invoked way to is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Floor space ratio standard (delete if no variation sought)

The objectives of the Floor Space Ratio standard are set out in Clause 4.4 (1) of RLEP 2012. Details of how the development satisfies each of the objectives is provided in the table below:

Objective	Details of how the development satisfies the objective
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality	
(b) to ensure that buildings are well articulated and respond to environmental and energy needs	
(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	
(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	

Building height standard (delete if no variation sought)

The objectives of the Building Height standard are set out in Clause 4.3 (1) of RLEP 2012. Details of how the development satisfies each of the objectives is provided in the table below:

Objective	Details of how the development satisfies the objective
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	
(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item	

(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	
---	--

Minimum subdivision lot size standard (delete if no variation sought)

The objectives of the Minimum Subdivision Lot Size standard are set out in Clause 4.1 (1) of RLEP 2012. Details of how the development satisfies each of the objectives is provided in the table below:

Objective	Details of how the development satisfies the objective
(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties	
(b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views	
(c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose	

In conclusion, compliance with the xxx development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether ‘the applicant’s written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard’.

The grounds relied on by the applicant in their written request must be “environmental planning grounds” by their nature. Chief Justice Preston at [23] notes the adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be “sufficient”.

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term ‘sufficient’ did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

4. WILL CONTRAVENTION OF THE DEVELOPMENT STANDARD WILL RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

5. IS THERE ANY PUBLIC BENEFIT IN MAINTAINING THE DEVELOPMENT STANDARD?

6. ARE THERE ANY OTHER MATTERS THAT SHOULD BE TAKEN INTO CONSIDERATION?
