



Clause 4.6 Variation request – Floor space ration (FSR)

Proposal: Demolition of existing structures. Proposed dual occupancy with ancillary swimming pool and outbuilding.

At: 27 Knox Street, Belmore

To: Canterbury Bankstown Council.

Date: January 2023

Demolition of existing structures. Proposed dual occupancy with ancillary swimming pool and outbuilding at 27 Knox Street, Belmore.



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1. INTRODUCTION

This variation request has been prepared to demonstrate that the proposed departure from the applicable floor space ratio (FSR) can be recommended for approval by Council and determined by way of consent in accordance with the Canterbury Local Environmental Plan (CLEP) 2012 Clause 4.6 - Exceptions to Development Standards.

The objectives of Clause 4.6 of the CLEP 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.*

The subject site is zoned R4 High density residential. In accordance with Clause 4.4(2) of the CLEP the maximum permissible Floor Space Ratio (FSR) on the subject site is 0.75:1.

With that noted however, Subclause 4.4(2B) further states the following:

- (2B) *Despite subclause (2), the floor space ratio for a dual occupancy on land in the following zones must not exceed 0.5:1—*
 - (a) *Zone R2 Low Density Residential,*
 - (b) *Zone R3 Medium Density Residential,*
 - (c) *Zone R4 High Density Residential*

Since the proposed development application is seeking consent for a dual occupancy on a site that is zoned R4 high density residential, the applicable FSR for the subject site is further reduced to 0.5:1.

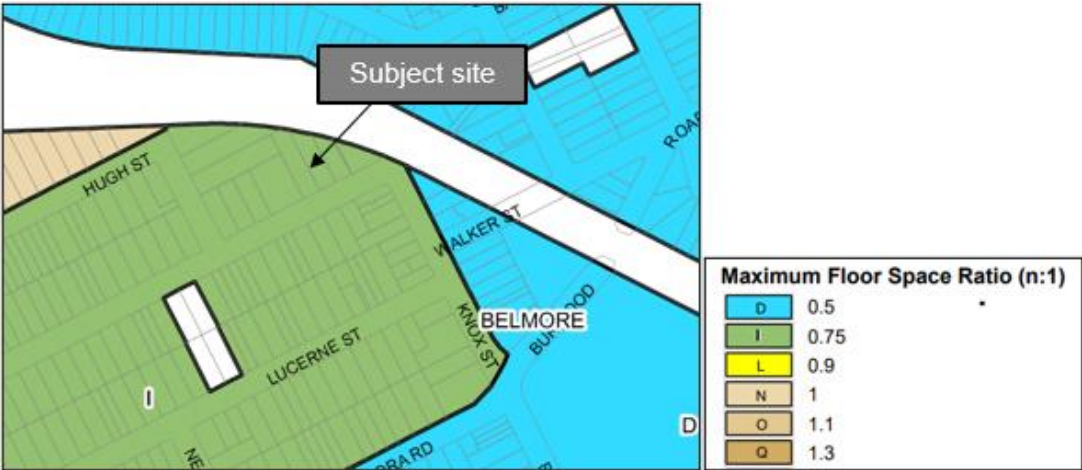


Figure 1: Maximum FSR (Source Canterbury local Environmental Plan 2012)

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2. FSR VARIATION ASSESSMENT

Floor space ratio (FSR) of 0.5:1 applies to the subject site.

The surveyed site area is 793.10m²

The maximum Gross floor area (GFA) of 396.55m² applies to the existing parent lot.

Total Site Area	Surveyed Site Area	Max GFA	Proposed GFA	Net variation
793.10m ²		396.55m ² FSR 0.5:1	<u>Dwelling 1</u> Site area: 412.88m ² Ground floor – 106.62m ² First floor – 115.53m ²	
			<u>Dwelling 2</u> Site area: 380.22m ² Ground floor – 110.79m ² First floor – 120.42m ²	
			Total proposed GFA - 453.36m ²	
			Total net GFA exceedance - 56.81m ²	Total net variation - 7% increase
			Total proposed FSR – 0.57:1	

Table 1: FSR Variation assessment

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FSR assessment:

The proposed development comprises a total GFA of 453.36m², which constitutes an FSR of 0.57:1. This exceeds the development standard by 56.81m², which equates to a non-compliance of 7%.

Where the variation of a development standard exceeds 10%, the DA must be determined by the Local Planning Panel. In this instance, the proposed variation remains with the delegation of Canterbury Bankstown Council.

3. CLAUSE 4.6 CONSIDERATIONS

Clause 4.6 (2) provides that:

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.

It is noted that the FSR control is not expressly excluded from the operation of this clause. This Clause 4.6 request is prepared in accordance with the specific requirements of Clause 4.6 (3) and Clause 4.6 (5) and therefore includes consideration of:

- *Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *Whether there are sufficient environmental planning grounds to justify contravening the development standard;*
- *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.*

Clause 4.6 (4) provides that 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

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(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 Planning Secretary has been obtained.

This request for variation of the standards has also been prepared with reference to Varying development standards: *A Guide August 2011 published by the Department of Planning Infrastructure and Environment*. This request considers the three relevant sections of the Wehbe 'five part test' (*Wehbe v Pittwater Council (2007) 156 LGERA 446*):

- 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (not relevant in this instance);*
- 4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard 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 (not relevant in this instance).*

This clause 4.6 request for variation of the FSR development standard demonstrates that, in the circumstances of this case, there are sufficient environmental planning grounds to justify the proposed non compliance with the maximum permissible FSR as evidenced by the:

- a) Compliance of the proposed development with the objectives of the zone and FSR standard which in turn demonstrates that the proposed development is in the public interest as detailed within this report;

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- b) Consistency of the proposed additional floor space and building bulk and scale with the existing character of the locality as demonstrated by the photographic context in Figure 2 - Figure 5;
- c) Consistency of the proposed additional floor space and building bulk and scale with the desired future character of the residential precinct. This is demonstrated by the ability of the proposed development to help achieve the stated objectives of the subject zoning detailed within this report;
- d) Lack of any excessive adverse cumulative impact associated with the FSR non-compliance as demonstrated in the analysis of recent local approvals outlined within this report
- e) The proposed development notwithstanding the FSR non-compliance satisfies the draft revised test for Clause 4.6 and provides a better planning outcome for the site and the locality.

On this basis it can be concluded that the proposed development will achieve better planning, environmental, social and economic outcomes if flexibility is provided with regard to the FSR standard in the particular circumstances of the case in which this variation sought.

4. JUSTIFICATION FOR VARIATION

As held by the court in *Wehbe v Pittwater Council* [2007] NSWLEC827, development standards are not an end in themselves but a means of achieving environmental and planning objectives. Where the objectives of the development standard are achieved, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

4.1 Compliance with The FSR Development Standard Is Unnecessary

The following subsection of this report demonstrates that compliance with the FSR standard is unnecessary in this instance because the proposed development meets the objectives of the FSR standard and the zone and consequently the intent of the FSR standard is achieved regardless of the non-compliance.

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4.2 Compliance with The Objectives of Clause 4.4

The proposed development complies with the relevant objectives of the zone. This assessment considers only those objectives that are relevant to the proposed development, which are:

- a) To provide effective control over the bulk of future development,*
- b) to protect the environmental amenity and desired future character of an area,*
- c) to minimise adverse environmental impacts on adjoining properties and the public domain,*
- d) to optimise development density within easy walk of the railway stations and commercial centres.*

Compliance Assessment

The proposed development consists of contemporary infill development that is limited to a two-storey attached dual occupancy development. The proposed development is in keeping with the desired future character of the immediate precinct. The rear boundary of the subject site abuts an adjoining freight rail corridor and as such will not result in any excessive undue environmental impacts upon the adjoining properties and the public domain and is therefore compliant with the objectives of Clause 4.4 of the CLEP.

4.3 Compliance with The Objectives of the Zone

Numerical standards are often a crude reflection of intent. Development may achieve the underlying purpose of a standard even though it does not strictly comply with the numerical control. It is widely recognised that such variations can be numerically small or large. The subject site is zoned R4 High density residential, and the proposed development complies with the objectives of the zone which are addressed thematically as follows:

- a) To provide for the housing needs of the community within a high density residential environment;
- b) To provide a variety of housing types within a high-density residential environment, and;
- c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

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Compliance Assessment

The development proposal involves the construction of an attached dual occupancy development to meet the day to day needs of future occupants of the site. The proposed development results in an increased residential density from a single storey detached dwelling house to an attached dual occupancy comprising a total of eight bedrooms across both dwellings.

The proposed development is limited to a 2-story residential development, which is characteristic of the Knox Street streetscape as illustrated in figures 2-6 below. The Knox Street, Streetscape consists of a combination of: low rise residential flat buildings, single detached dwelling houses, double storey detached dwelling houses and attached dual occupancy developments. Subsequently, the proposed development will not result in any undue excessive environmental impact and is in keeping with the abovementioned objectives of clause 4.4 of the CLEP.

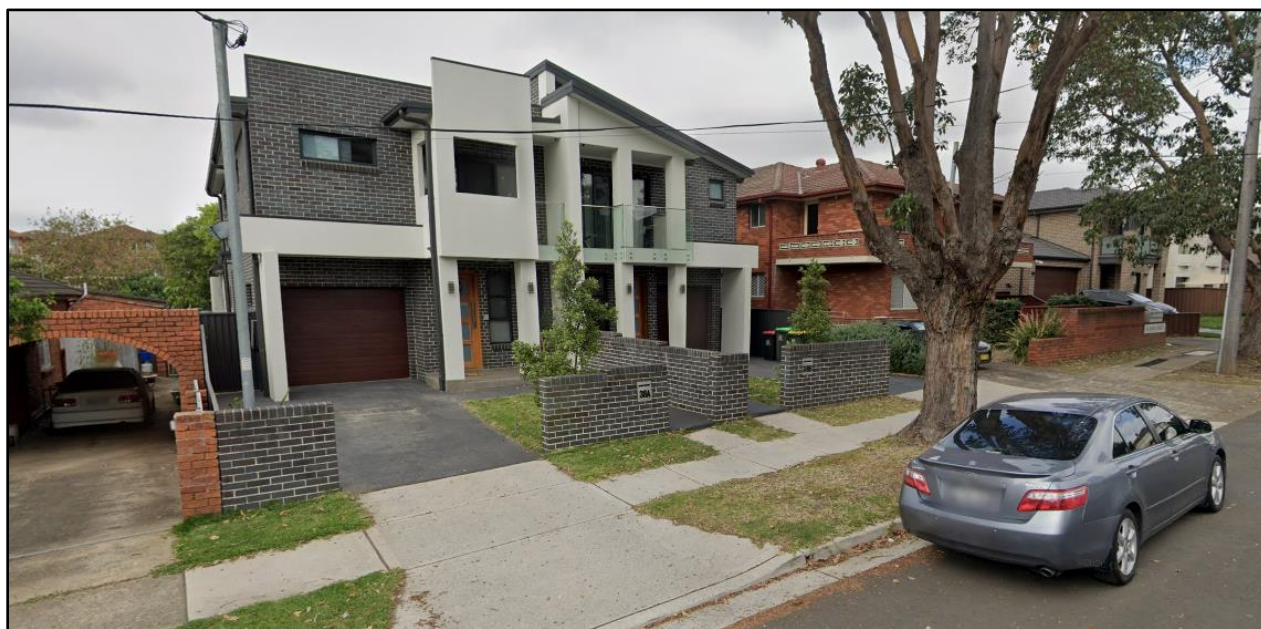


Figure 2: Existing streetscape of Knox Street consisting of 2 storey attached dual occupancy development

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Figure 3: Existing streetscape of Knox Street consisting of 2 storey residential development.



Figure 4: Existing streetscape of Knox Street consisting of 2 storey attached dual occupancy development

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Figure 5: Existing streetscape of Knox Street consisting of 2 storey residential development.

5 CONCLUSION

This clause 4.6 request demonstrates that there are sufficient environmental planning grounds to justify contravening the CLEP Maximum Floor Space Ratio standard in this instance.

This is demonstrated by the:

- Compliance of the proposed development with the objectives of the zone and FSR standard which in turn demonstrates that the proposed development is in the public interest as detailed within this report;
- Consistency of the proposed additional floor space and building bulk and scale with the existing character of the locality as demonstrated by the photographic context in Figures 2 – 5;
- Consistency of the proposed additional floor space and building bulk and scale with the desired future character of the immediate precinct. This is demonstrated by the ability of the proposed development to help achieve the stated desired future characteristics.

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- Lack of any adverse cumulative impact associated with the FSR non-compliance as demonstrated in the analysis of recent local approvals within this report;

The proposal results in a FSR of 0.57:1.

Ordinarily, the applicable FSR within the R4 high density residential zone relevant to the subject site would be 0.75:1. The proposed breach in the FSR is a direct result of the proposed development typology being a dual occupancy, and thus, triggers subclause 4.4(2B), resulting in a significantly reduced FSR of 0.5:1. The rear boundary of the subject site abuts a freight rail line and as such the proposed FSR exceedance of 7% will not result in any undue privacy or amenity impacts to adjoining residential development.

On this basis it can be concluded that the proposed development will achieve better planning, environmental, social and economic outcomes if flexibility is provided with regard to the FSR standard in the particular circumstances of the case in which this variation sought.

