

Clause 4.6 Request to Vary the FSR Development Standard



St Andrews Anglican Church, Roseville

Place of Public Worship Extension

Submitted to Ku-ring-gai Municipal Council

On Behalf of St Andrews Anglican Church, Roseville

April 2014 ■ 13292

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This report has been prepared by:

A handwritten signature in blue ink, appearing to read 'Michael Rowe', with a horizontal line underneath it.

Michael Rowe

7/04/2015

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1.0 Introduction

A Development Application (DA) was submitted to Ku-ring-gai Municipal Council for alterations and additions to the St Andrews Anglican Church (the Church) at 3A Hill Street, Roseville in August 2014.

The proposal is required as the current church space and facilities can no longer accommodate the growing congregation and do not meet today's current standards, particularly for Occupational Work Health and Safety and accessibility. With a growing number of youth and young families joining the Church community, the need for improved facilities to conduct the Church's many community programs is essential for effective on-going operations.

The DA seeks approval for:

- demolition of the existing church hall and rectory, site preparation and associate tree removal;
- excavation and construction of a basement car park;
- alterations and additions to expand the Church building and construction of a new interconnected church hall, incorporating a:
 - worship space;
 - multipurpose hall;
 - lobby / reception area;
 - meeting rooms;
 - offices;
 - Sunday school spaces;
 - counselling rooms;
 - residential apartment (for ministry staff); and
 - kitchen and bathroom facilities.
- construction of an elevated courtyard area;
- construction of a new two storey rectory building; and
- associated landscaping works.

The DA was accompanied by a clause 4.6 request to vary the FSR development standard in the Ku-ring-gai Local Environmental Plan 2012 (LEP 2012). Clause 4.6 of LEP 2012 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Following public exhibition of the DA, Council wrote to the applicant requesting it address a range of matters. The applicant has worked with Council to resolve these issues and has amended its DA to Council. In the context of the amended plans and the issues raised in its letter, the Clause 4.6 Request has been updated.

2.0 Development Standard to be Varied

LEP 2012 sets a maximum FSR development standard of 0.3:1 on the eastern portion (existing rectory site) and 0.8:1 on the western portion (existing hall and church site).

Whilst the proposed development has been designed to respond to the site holistically, when calculating the FSR for the purposes of technical compliance with the LEP, the FSR must be determined for each area of the site. **Table 1** below provides a summary of the GFA and FSR for each of the FSR zones and the total FSR for the site.

In summary, when the lots are viewed in isolation the proposed development will be below the FSR by 0.10:1 on the western site, and above the FSR by 0.27:1 on the eastern site. It is noted that when the full development potential across the two sites is calculated this only equates to a 0.045:1 variation above the combined FSR potential.

Table 1 – Summary of FSR

	Western Portion	Eastern Portion	Total Site
Site Area	2080	1213.2	3293.2
Proposed GFA	1560	697.5	2257.5
Proposed FSR	0.75	0.57	0.685
LEP 2012 FSR	0.85	0.3	0.64
Compliance	0.10:1 below (208m ²)	0.27:1 above (327m ²)	0.045 above (150m ²)

3.0 Justification for Contravention of the Development Standard

3.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, which relevantly provides case law relating to SEPP 1 and clause 4.6 objections, Chief Justice Preston outlined the rationale for development standards, and the ways by which a standard might be considered unnecessary and/or unreasonable. At paragraph 43 of his decision in that case Preston CJ noted:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Wehbe v Pittwater Council*, Preston CJ expressed the view that there are five different ways in which a variation to a development standard might be shown as being unreasonable or unnecessary. Of particular relevance in this instance is 'way 1', that a development standard might be shown as unreasonable or unnecessary if *“The objectives of the standard are achieved notwithstanding noncompliance with the standard.”*

The objectives of the development standard are:

- (a) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,*
- (b) to enable development with a built form and density compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,*
- (c) to ensure that development density provides a balanced mix of uses in buildings in the business zones.*

The proposed development satisfies the objectives of the FSR development standard, as set out below and therefore application of the standard is unreasonable and unnecessary.

Objective (a) To ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai

The proposed density equates to 327m² of additional GFA on the eastern portion of the site, which when balanced with the surplus of GFA potential on the western portion only equates to a variation of 150m² of GFA or (0.045:1) across the whole site.

Such a minor variation over a 3,293m² site means that the development will still result in a scale that reflects the desired density for the Roseville centre. Further consideration of the proposed scale and its impact on the adjoining properties is provided in Section 3.2. It is noted that the proposed development complies with the maximum building height development standard.

It is also noted that the development will only result in two dwellings across the site, therefore not resulting in a greater residential density than would be achieved by a complying scheme.

Objective (b) To enable development with a built form and density compatible with the size of the land to be developed, its environmental constraints and its contextual relationship

For the reasons detailed above, the proposed density is compatible with the size of the land.

The redistribution of GFA from the western portion of the site to the eastern portion is a direct response to environmental constraints and is the outcome of a detailed site analysis, which identified where the built form would have the minimum impact on the character of the area, which is at the rear of the eastern portion of the site. Further consideration of the proposed design and its response to the environmental constraints is provided in Section 3.2.

In terms of its contextual relationship, it is understood that the intent of the 0.3:1 control is to preserve the residential character along Bancroft Avenue. The proposed design achieves this by providing a dwelling with a density and built form that is consistent with the surrounding area and planning controls, noting that the proposed development complies with the maximum building height development standard. The additional density is then located in the form of the hall which is located behind the dwelling at the rear of the property along the southern boundary and complies with the maximum building height. Further consideration of the proposed scale and its impact on the adjoining properties is provided in Section 3.2.

Objective (c) To ensure that development density provides a balanced mix of uses in buildings in the business zones

The site is not located in a business zone and therefore this objective is not relevant.

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

As established in **Table 1**, the proposed variation to the FSR control is largely the result of redistributing the development potential that could have otherwise been achieved within the western portion of the site into the eastern portion (see **Figure 1**).

If made to comply, the GFA would need to be relocated from the eastern portion of the site back into the western portion where the FSR control allows for it. This would have the following more significant environmental impacts which justify contravening the development standard in this instance:

- St Andrews would potentially be forced to reconsider if it could retain the historic church building in order to achieve its FSR potential. Demolition of the church building would have a far greater adverse impact on the streetscape and the heritage character of the area (see **Figure 2**).
- If the church building could be retained, the height and massing of the hall would need to significantly increase, having a much greater impact on the streetscape character, adjoining properties and curtilage of the church building (**Figure 3**).

The size of the hall would need to be increased within the western portion of the site where it has an interface with the Hill Street residential apartments, rather than the eastern portion as proposed, where it has an interface with a carport. Compliance with the controls would therefore be likely to result in greater shadow, privacy and built form impacts on the adjoining apartment building.

The proposed development and alternative compliant scenarios are illustrated below in Figures 1-3.

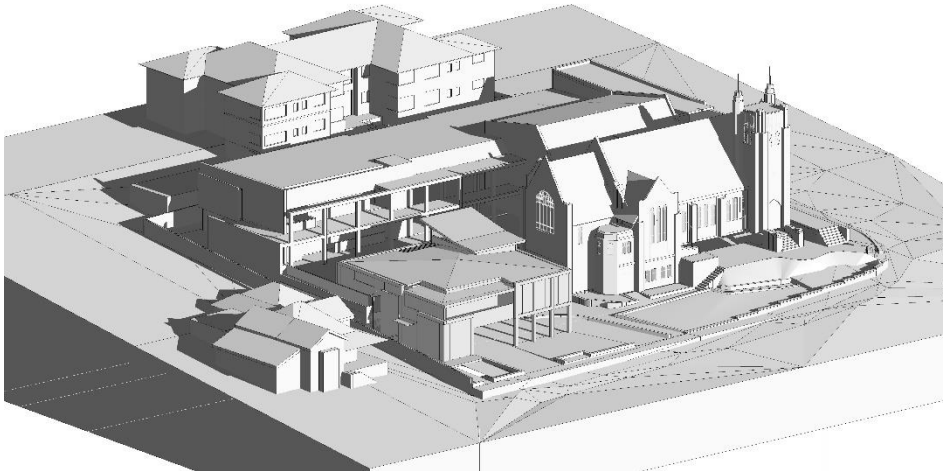


Figure 1 – Scenario 1 Proposed scheme

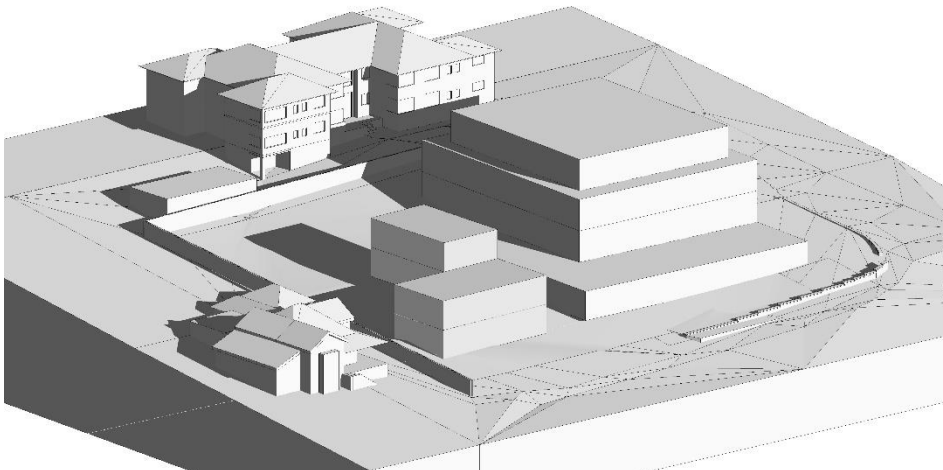


Figure 2 – Scenario 2 Demolition of the Church

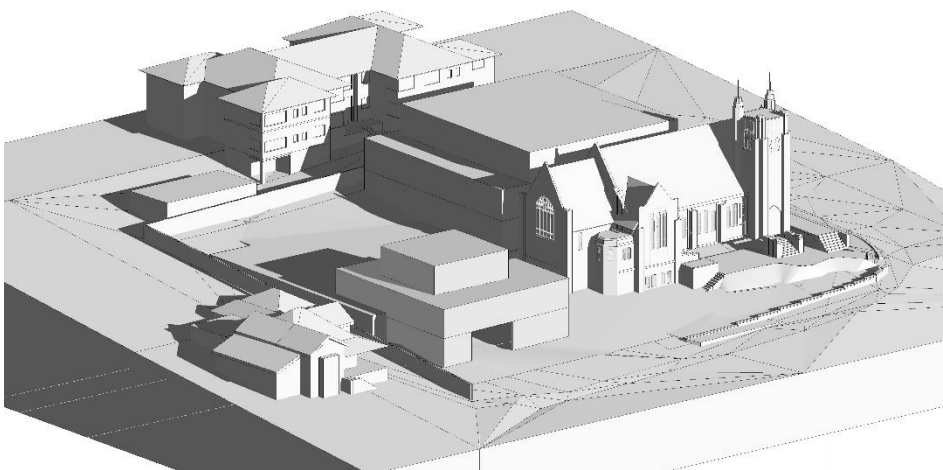


Figure 3 – Scenario 3 Bulkier Hall Building

The proposed development has been designed to ensure that from Bancroft Avenue the buildings read as a low scale two storey form consistent with the character of the street (see **Figure 4**).



Figure 4 – Photomontage of the development from Bancroft Avenue

Therefore the main environmental impact as a result of redistributing the floor space to the rear of the eastern portion is the loss of an area that would typically be backyard if the development was a traditional dwelling house.

Development in this location has the potential to impact on 3 Hill Street and 3 Bancroft Avenue.

3 Hill Street

As demonstrated above in **Figure 3**, locating the FSR within the western portion of the site will have a far greater impact on the solar access, privacy and outlook of the apartments in 3 Hill Street than the proposed scheme. The location of the GFA within the eastern portion of the site redistributes this GFA to a part of the site where the 3 Hill Street apartments currently have their garages and at-grade parking. It is also noted that the proposal will reduce the size of the existing church hall along the boundary with the 3 Hill Street apartments, improving their solar access and outlook. Therefore the proposed variation will have a positive environmental impact on the apartments at 3 Hill Street.

3 Bancroft Avenue

Locating the FSR within the western portion will change the outlook from 3 Bancroft Avenue. In order to preserve as much of the landscaped outlook as possible the proposed building has been setback at the back corner of the site, specifically to allow for retention of the large existing tree (see **Figure 5**). In addition, the landscape plans place a special emphasis on achieving a high quality landscape solution along the boundary (see **Figure 5**).

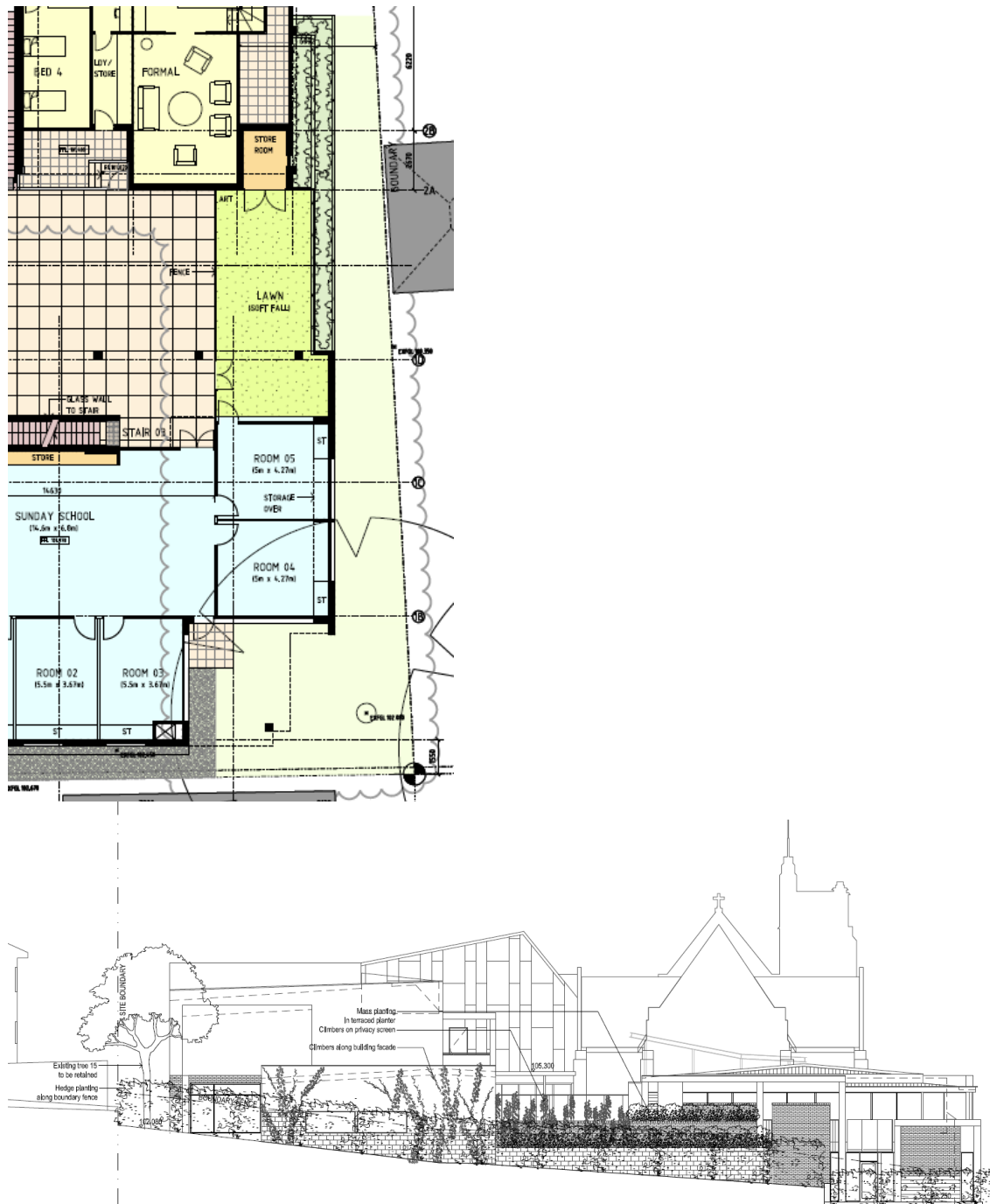


Figure 5 – Extracts of the floor plan and eastern elevation illustrating the proposed landscaping along the eastern boundary

The amended development will not have any privacy or heritage impacts or result in any additional overshadowing. Therefore the impact of the variation on 3 Bancroft Avenue is limited to the house’s outlook only, which as discussed above the impacts of which have been mitigated as part of the amended design.

In light of the above there is considered to be sufficient environmental planning grounds to justify contravening the development standard in this instance.

3.3 Secretary’s Concurrence

It is understood that the Secretary’s concurrence under clause 4.6(5) of LEP 2012 has been delegated to Council. The following section provides a response to those

matters sets out in clause 4.6(5) which must be considered by Council under its delegated authority:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The proposed contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

The public benefit of maintaining the development standard.

As there is no adverse environmental impacts other than impacting the outlook of 3 Bancroft Avenue, and the proposed variation still achieves the objectives of the standard, there is no public benefit in maintaining it.

Conversely the proposed development, which is a community funded development, for use by the community, will provide a number of significant public benefits which include but are not limited to:

- providing an improved and expanded centre for the community whereby a range of community orientated functions and services can be held;
- increasing the capacity for the community to attend and participate in local Sunday services;
- enabling a broader range of services provided by the Anglican Church to be run for the community through the expanded floor space, encouraging services such as counselling, mentoring programs and other community service programs to continue providing for the social and spiritual wellbeing of the broader Roseville community;
- enabling weddings and funerals to be carried out at the Church, enabling members of the congregation to participate in significant life events within their local community, and at their local Church;
- conserving the heritage streetscape character of Bancroft Avenue through a more sensitively designed and articulated built form and the removal of other built elements identified as being detracting; and
- increasing the office and consulting room space so that the ministry staff and other social-focused professionals can have a high amenity work space that can be offered as a benefit to the community members who utilise these services.

The proposed development will also support the growth of the Church so that it can continue to resource its innovative community service based program called the 'Community Project' whereby members of the Church provide a range of services for free to the community. These services include providing crisis accommodation, babysitting, running errands and grocery shopping for those less able, general maintenance tasks, a 'freezer' meals ministry, and legal and financial counselling services. To run the 'Community Project' the members draw from a wide range of resources provided by the Church buildings, using this space throughout the week to run these service tasks. The proposal to renovate and extend the Church's facilities would make an invaluable contribution to the effectiveness of this program and as such the proposal has the opportunity to directly contribute to the broader social and economic welfare of the Roseville community.

If Council is of the view that the Church cannot utilise the rectory site (as proposed) and it cannot redevelop the existing church site then it would have no opportunity to modernise its facilities. As a key element of the social fabric of Roseville and Ku-ring-gai more broadly, sterilising the site and preventing the redevelopment from occurring is not in the public interest and is contrary to objectives of the LEP to:

- guide future development of land and the management of social and cultural resources in Ku-ring-gai for the benefit of present and future generations; and
- promote opportunities for social, cultural and community activities.

As well as being contrary to the objects of the EP&A Act to encourage the provision and co-ordination of community services and facilities.

Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration.

4.0 Conclusion

This clause 4.6 demonstrates Council can be satisfied that:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the standard are achieved; and
- that there are sufficient environmental planning grounds to justify contravening the development standard as the proposed scheme will have less adverse impacts than a scheme that was made to comply.

It is therefore requested that Council grant development consent for the proposed development even though it contravenes the FSR development standard in LEP 2012.