



Clause 4.6 Variation - Floor Space Ratio (Clause 4.4)

Demolition of Existing Structures and Construction of Commercial Office Development

32-34 Ricketty Street, Mascot
Lot 1 and Lot 2 DP220569

**Prepared by Willowtree Planning Pty Ltd on behalf
of LinkCity**

December 2020

Clause 4.6 Variation – Floor Space Ratio

Proposed 11-Storey Commercial Office Development

32-34 Ricketty Street, Mascot (Lot 1 and Lot 2 DP 220569)

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of a Development Application (DA) for the **demolition of existing structures and construction of 11-storey commercial office development** within the property located at 32 Ricketty Street, Mascot, legally described as Lot 1 and Lot 2 DP220569.

The proposal exhibits a technical non-compliance with Clause 4.4 (Floor Space Ratio) under the *Botany Bay Local Environmental Plan 2013* (BBLEP 2013).

This variation request has been prepared in accordance with the requirements of Clause 4.6 of BBLEP 2013, which includes the following objectives:

- (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.*

1.2 PROPOSED NON-COMPLIANCE

Under the provisions of Clause 4.4 in BBLEP 2013, the Site is subject to a maximum permissible floor space ratio of 3:1.

The proposed development comprises a non-compliance with Clause 4.4 Floor Space Ratio development standard of **3:1** by **4,138.6m²**, equating to a proposed FSR of 3.90:1 (**29.90%**) as summarised in **Table 1** below.

Table 1. Variation Summary			
BBLEP 2013	BBLEP 2013 Development Standard	Proposed Maximum Floor Space Ratio	Proposed Development Non-Compliance
Clause 4.4 - Floor Space Ratio	Maximum Floor Space Ratio 3:1	3.90:1	4,138.6m ² (29.90%)

1.3 PLANNING JUSTIFICATION

Under an alternative building height-compliant scenario, the built form potential of the Site would be under-realised. It is furthermore submitted that a hypothetical floor space ratio-compliant scheme at the Site would:

- Not achieve an improved design outcome compared to that proposed;
- Not result in an improved streetscape or amenity outcome compared to that proposal;
- Not reduce any perceived environmental impacts compared to that proposed;
- Not appropriately serve the needs of the local community;
- Result in an outcome which would not satisfy the objectives of the Site's zoning to the same extent as that proposed in relation to encouraging high density residential development to the local community;
- Result in an outcome which does not respond as effectively to the employment generation and growth under the District Plan.

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This Clause 4.6 Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under BBLEP 2013. It considers the various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed floor space ratio non-compliance is the best means of achieving the objective of encouraging orderly and economic use and development of land under Section 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Further, this Clause 4.6 Variation Request has demonstrated that there are sufficient environmental planning grounds for the contravention of the building height development standard in accordance with Clause 4.6(3)(b) of the BBLEP 2013. In this respect, this Clause 4.6 Variation Request has provided the following:

- Identified the specific aspect or feature of the development that contravenes the relevant development standard.
- Justified why the contravention of the development standard is acceptable, rather than simply promoting the benefits of carrying out the development as a whole.
- Explained on what basis there are sufficient environmental planning grounds to justify contravening the development standard.

In justifying the proposed contravention and demonstrating sufficient environmental planning grounds, this request is considered to have demonstrated how the proposed contravention itself satisfies **Section 1.3** of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This is discussed further in **Section 4.4** of this request.

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PART B THRESHOLDS THAT MUST BE MET

2.1 CLAUSE 4.6 OF THE BBLEP 2013

In accordance with Clause 4.6 of BBLEP 2013 Council is required to consider the following subclauses:

- (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 Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

These matters are responded to in **Part D** of this Clause 4.6 Variation.

2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions has established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
 - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
 - There are sufficient environmental planning grounds to justify contravening the development standard;
 - The development is in the public interest;
 - The development is consistent with the objectives of the particular standard; and
 - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
 - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

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- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- 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; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in **Part D** of this Clause 4.6 Variation.

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PART C STANDARD BEING OBJECTED TO

3.1 CLAUSE 4.4 FLOOR SPACE RATIO OF BBLEP 2013

The development standard being requested to be varied is Clause 4.4 Floor Space Ratio of BBLEP 2013.

Table 2 outlines the proposed Clause 4.6 Variation to the building height development standard under Clause 4.3.

Table 2. Variation Summary			
BBLEP 2013	BBLEP 2013 Development Standard	Proposed Maximum Floor Space Ratio	Proposed Development Non-Compliance
Clause 4.4 - Floor Space Ratio	Maximum Floor Space Ratio 3:1	3.90:1	4,138.6m ² (29.90%)

The proposed development seeks approval for the demolition of the existing structures and the construction an 11-storey commercial office development. The proposed development would exhibit a gross floor area (GFA) of **17,980m²** equating to an FSR of **3.90:1**. The proposal therefore seeks to vary the floor space ratio development standard by **4,138.6m²** or **29.90%**.

It is considered that this variation to the FSR standard is reasonable in the circumstances of the case, as per the following justification:

- The additional FSR may be achieved within the height limit, and whilst also providing generous street setbacks, appropriate building separation and substantial landscape area suitable for deep soil planting.
- As such, the proposed development would exhibit an envelope, bulk and scale that are appropriate for the site and local context.
- The visual scale and appearance of the development would generally reflect other new commercial development within the precinct.
- The density proposed does not give rise to any unreasonable impacts on the adjoining properties in terms of overshadowing, loss of privacy or visual impact.
- A high level of amenity continues to be provided for occupants of the development.
- The proposed development provides both retail and office uses which will support the viability of the centre and provide much needed employment floor space in a location which is close Sydney Airport and various transport nodes.
- The availability and capacity of local infrastructure and public transport supports the additional floor space proposed. The site is located in close proximity to Mascot Train Station and a range of bus services.

Despite the variation to the FSR development standard, the proposed development continues to comply with the maximum building height development standard of **44m**, presenting a maximum height of **43.4m**.

Overall, the variation to the FSR development standard will have a negligible impact on surrounding properties and adequate amenity will be retained in terms of overshadowing, solar access and visual and acoustic privacy as demonstrated in the ensuing sections of this report.

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PART D PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

4.1 OBJECTIVES OF THE CLAUSE 4.4 FLOOR SPACE RATIO UNDER BLEP 2013

A key determination of the appropriateness of a Clause 4.6 Variation to a development standard is the proposed development's compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognised this as one of the ways in which a variation to development standards might be justified (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

Therefore, while the Site is subject to relevant numerical standards for floor space ratio, the objectives and underlying purpose behind these development standards are basic issues for consideration in the development assessment process.

The proposed development is consistent with the relevant objectives of the control for the reasons outlined in **Table 3**.

Table 3. Consistency of the Proposed Development with the Floor Space Ratio Objectives	
OBJECTIVE	COMMENT
a) to establish standards for the maximum development density and intensity of land use,	The proposed development is consistent with the established pattern of variation to the FSR development standard in the surrounding locality and has been designed to provide a density across the Site that is not deemed to represent an over-development of the Site.
b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,	<p>The FSR of the proposed development is considered consistent with the desired future character of the site.</p> <p>It has been demonstrated that the proposal provides an appropriate bulk and scale which is compatible with the emerging context of development within Mascot.</p>
c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,	<p>Land surrounding the Site to the south, east and west generally contains older style industrial development and has been zoned to allow for significant transition through increased densities and building height. Several recent approvals, including 253 Coward Street, 46-50 Kent Road, 40 Ricketty Street and 1-5 Chalmers Crescent, reflect a development of a similar scale, accommodating additional FSR and developed to the height controls.</p> <p>In light of the above, the proposed development has been designed to appropriately respond to the current context relating to the immediate locality as well as the future envisaged height and density.</p>
d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,	<p>Despite the non-compliance with the FSR development standard, the proposed built form is compliant with the maximum building height development standard of 44m. The proposed built form is reflective of the desired density within the immediate area and is commensurate of the recently approved development applications.</p> <p>As aforementioned, where the contravention occurs, is not visible from the public domain and the bulk and scale of the built form does not dominate the streetscape when viewed from surrounding sites or the public domain. Further the resulting built form would not result in any visual amenity impacts greater than that of a fully compliant building envelope. This is justified through the introduction of a compliant building height and generous setbacks. In the absence of</p>

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Table 3. Consistency of the Proposed Development with the Floor Space Ratio Objectives

OBJECTIVE	COMMENT
	any identifiable visual impacts associated with the proposed development, the proposal is considered to represent a development outcome which is compatible with the desired future character of the area.
e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	As set out in Part F of the SEE, the proposed development would not significantly impact on the amenity of adjoining premises. Rather, it is considered that the proposed development would positively impact on the amenity of adjoining premises.
f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	<p>Consent is sought for the demolition of all existing structures located across the Site.</p> <p>The proposed development responds to the size and characteristics of the Site. The detailed site analysis prepared by Scott Carver (refer to Appendix 7 and Appendix 8) demonstrates that the Site has the environmental capacity to accommodate the proposed GFA and resulting FSR without generating adverse environmental impacts.</p> <p>Further, the proposed building envelope is commensurate to the surrounding locality and reflects recently approved development applications located at 253 Coward Street, 46-50 Kent Road, 40 Ricketty Street and 1-5 Chalmers Crescent. Therefore, the proposed development is considered consistent with the desired future character of the Site.</p>
g) to facilitate development that contributes to the economic growth of Botany Bay.	<p>The proposed development would create around 17,980m² of Commercial floorspace, concentrated within the proposed commercial office development. The proposed development is therefore considered to be key in meeting the demand for new Commercial Premises and Office Premises floorspace across Mascot, providing around 16,446m² of Net Lettable Office Premises floorspace.</p> <p>The resulting non-compliance will subsequently result in increased employment density on the Site, equating to approximately 4,138.60m² of additional GFA. The increased floor space will directly contribute to the economic growth of the immediate locality.</p> <p>Further to the above, the resulting design outcome will present has a high quality building with adequate car parking and EOTF, increased landscaping and setback provisions, as well as WELL Platinum, 6 Star Greenstar and Net Zero Carbon Goals which will ultimately attract high quality future tenants to Mascot.</p>

4.2 OBJECTIVES OF THE ZONE

The Site is currently zoned B7 Business Park Zone under BBLEP 2013. The proposed development is located within an established commercial and industrial area and is permissible at the Site. The proposed development is consistent with the following B7 zone objectives.

Table 4. Consistency of the Proposed Development with the Zone Objectives

Objective	Comment
▪ To provide a range of office	The proposal provides additional commercial floor space that has

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Table 4. Consistency of the Proposed Development with the Zone Objectives

Objective	Comment
and light industrial uses.	been specifically designed to meet the demand in the Mascot Strategic Centre. Whilst providing a Commercial Office Development to meet the needs identified in the Greater Sydney Regional Plan and the Eastern Harbour District Plan, the proposal provides a development of a bulk and scale thereby ensuring the development integrates with the character of the surrounding environment.
▪ To encourage employment opportunities.	The proposed development would create employment supporting floorspace near to where a range of commercial and residential land uses, thereby supporting the Greater Sydney's Commission's ideal of the 30-Minute City. The Site itself is highly accessible by rail, bus and car, as well as via active modes of transport.
▪ To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.	<p>The proposed development would provide significant business and office land uses.</p> <p>It is envisaged that the Site would primarily cater to Commercial Premises type land uses, including office and business premises, and this is indeed the key strategic land use driver of the proposed development. However, the DA does not seek consent for any specific tenancy fit-out and use of the Site. It is understood that in the future, DAs or Code Complying Development Certificates would be sought to facilitate more specific commercial land uses at the site.</p> <p>In addition, the proposed development incorporates a food and drink premises and wellness centre/gym to service the day to day needs of workers across the Site and the immediate locality.</p>
▪ To encourage uses in the arts, technology, production and design sectors.	Not applicable to the proposed development.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. Establish that compliance with the development standard is **unreasonable or unnecessary** because **the objectives of the development standard are achieved notwithstanding non-compliance with the standard**.
2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. Establish that 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.

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5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of *Wehbe v Pittwater Council [2007] NSWLEC 827*, only one of the above rationales is required to be established. Notwithstanding the proposed variation, the development is consistent with the underlying objectives of the standard for Floor Space Ratio and the relevant Zoning prescribed under BBLEP 2013.

In view of the particular circumstances of this case, strict compliance with Clause 4.4 of BBLEP 2013 is considered to be both unnecessary and unreasonable. The proposed development does not conflict with the intent of Clause 4.4 as demonstrated above and satisfies the objectives, notwithstanding the proposed numeric variation.

The proposed development is justified on the following environmental outcomes:

- It represents logical and co-ordinated development of the Site for the purpose of a commercial office development;
- It will result in improvements to the functionality and operations of the Site through a carefully designed built form that is responsive to the Site context and its desired character;
- The architectural design provides a superior built form outcome for the Site and is functional for the proposed outcomes;
- Development will be compatible with the desired and future character of the immediate locality;
- The proposed variation to the FSR will not give rise to any environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy, compared to a compliant scheme;
- Compliance may be achieved by reducing the scale of the development, but this would undermine both the visual quality and functionality of the design and in turn would reduce the opportunity for the delivery of additional floor space;
- The proposed development establishes valuable characteristics on how Council envisage the Site and neighbouring properties to be developed; and
- Reducing the FSR to achieve a compliant FSR would not deliver any measurable environmental or amenity benefits.

A different Site configuration would have likely resulted in a less efficient use of the Site given the site-specific constraints present. Use of a different Site would have meant that suitably zoned, under-developed commercial land would remain under-utilised and therefore not developed to its full planning potential. In addition, compliance with Clause 4.4 is further considered unreasonable given that this would:

- Effectively sterilise a significant portion of the site from being able to be redeveloped for commercial employment generating and other purposes;
- A compliant scheme would result in smaller floorplates which would subsequently compromise the built form;
- Not provide sufficient room to achieve the ground floor activation and through-site link;
- An alternative site configuration would have detrimental impacts on the floor plate design and the ability for smaller tenancies to accommodate a portion of the floor plate; and
- Reduce the feasible building floorplate achievable for the proposed commercial office development, which would not be efficient to deliver from a cost-benefit perspective and therefore threaten the financial viability of the proposed development.

In light of the above, the abovementioned justifications are considered valid and, in this instance, the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site when compared to a compliant floor space ratio scenario. The objectives of Clause 4.4 as well as the B7 Business Park Zone would be upheld as a result of the proposed

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development. Therefore, the application of the floor space ratio development standard is therefore unreasonable and unnecessary in response to the proposed development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENTING THE DEVELOPMENT STANDARD

The justification for the proposal variation to the development standard for Floor space is considered to be well founded and this report demonstrates sufficient environmental planning grounds for support as, notwithstanding the proposed departure from the development standard, the feature of the development that contravenes the development standard (Floor Space Ratio):

- Does not give rise to any measurable or unreasonable visual impacts from the public domain. As aforementioned, where the contravention occurs, is not visible from the public domain and the bulk and scale of the built form does not dominate the streetscape when viewed from surrounding sites or the public domain. Further, the resulting built form would not result in any visual amenity impacts greater than that of a fully compliant building envelope. This is justified through the introduction of a compliant building height and generous setbacks. In the absence of any identifiable visual impacts associated with the proposed contravention, the proposal is considered to represent a development outcome which is compatible with the desired future character of the area.
- Does not result in any environmental or amenity impacts to the surrounding or adjoining properties. In this respect, the proposal is commensurate to the context of the Site and the available outlook from surrounding sites to the development does not provide opportunity for any unreasonable or unwarranted visual impacts.
- A considered site analysis and spatial arrangement of built form and landscape elements has been demonstrated to justify the variation to the maximum floor space ratio.

The variation to the development standard for Floor Space Ratio is considered well founded because, notwithstanding the proposed non-compliance with the standard:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated;
- The scale of the proposal is appropriate for the Site and the proposed use;
- The proposed building envelope would provide a scale of development that is more commensurate of the area and streetscape;
- The proposal provides a design outcome that responds to the Site constraints and considers the context as well as the existing and anticipated built form;
- The proposed development represents a superior ESD outcome for the site with reduced basement car parking rates and encouraging reliance on public and active modes of transport;
- The proposed development would not create a significant visual or overshadowing impact for surrounding land users;
- The proposed development will not give rise any unreasonable amenity impacts to adjoining properties;
- Strict compliance with the building controls would unreasonably restrict the potential to develop the Site to its full potential;
- The proposed development is consistent with the desired and future character of the Site and will not result in any measurable or unreasonable environmental or amenity impacts; and
- Reducing the FSR to achieve a compliant FSR would not deliver any measurable environmental or amenity benefits. Rather, the proposed development is considered to improve the amenity of the surrounding locality.

4.5 PUBLIC INTEREST

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development be in the public interest because it is

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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.

Sections 4.1 and 4.2 have already demonstrated how the proposed development is consistent with the objectives of Clause 4.4 as well as the objectives of the B7 Business Park zone under the BBLEP 2013.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- Contributes to the urban renewal and transformation of the Site;
- The proposed architectural design significantly improves the streetscape interface with the public domain, activating streetscapes along Ricketty Street and Ossary Street;
- Stimulating employment and resolving existing CPTED issues within the locality;
- Contributes to pedestrian and residential amenity, including the provision of the through-site link;
- Driving increased commercial interest in renting or purchasing Office Premises Floorspace within the Mascot Strategic Centre, thereby meeting some of the new demand for Office Premises floorspace as identified by the Greater Sydney Commission;
- Creating employment supporting floorspace near to where a range of residential development is located, thereby supporting the Greater Sydney's Commission's ideal of the 30-Minute City;
- The proposed development will result in a significant improvement to the development across the Site, commensurate to the surrounding locality;
- The proposed built form will make a positive contribution to the ongoing operation of the Site;
- Provide a development outcome that is compatible with the existing and emerging commercial/industrial that is a permissible land use and consistent with the land use zone objectives and substantially increases the landscape provisions across the Site compared to what is currently available; and
- Substantially improve the access for Council to their stormwater asset through the provision of three (3) access points.

There are no significant public disadvantages which would result from the proposed development. Accordingly, the public advantages of the proposed development is therefore considered to far outweigh the public disadvantages.

The proposed development is therefore considered to be justified on public interest grounds.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliances with Clause 4.4 would not raise any matters of significance for State or regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under section 117 of the *Environmental Planning and Assessment Act* (EP&A Act).

Planning Circular PS18-003, issued by the NSW Department of Planning, Industry and Environment requires that all regionally significant development applications, regardless of whether the variation to the standard is more than 10%, be considered by the relevant Local Planning Panel rather than under delegation. The proposed development is regionally significant as the capital investment is greater than **\$30 million** and would result in exceedances of the relevant development standard by **29.90%**.

Furthermore, by including this non-compliance with Clause 4.4, the proposed development would be better be able to meet the objectives of the Greater Sydney Region Plan and Eastern City District Plan by:

- Establish new commercial office premises within proximity to public transport within an identified strategic centre;

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- The proposed development will provide a built form consistent with the objectives of the Local Environmental Plan; and
- The proposed development is appropriate for the Site and context, and achieves a high level of amenity for tenants within and surrounding the Site.

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARDS

Strict compliance with Clause 4.4 would result in:

- Less Office Premises floorspace to respond to the Greater Sydney Commission's strategic vision for Mascot.
- Greater impacts to the functional operation of the proposed use of the Site;
- The sterilisation of a significant portion of the Site from being able to be redeveloped for commercial employment generating purposes;
- Not result in any measurable environmental or amenity benefits to surrounding properties or the public domain.

Further to the above, in the event the development standards were maintained, the resulting benefits to the adjoining properties and wider public would be nominal.

As such, there is no genuine public benefit in maintaining this strict FSR control at the Site.

4.8 SUMMARY

For the reasons outlined above, it is considered that the objections to Clause 4.4 of the BBLEP 2013 are well-founded in this instance and the granting of Clause 4.6 Variation to this development standard is appropriate in the circumstances. Furthermore, the objection is considered to be well founded for the following reasons as outlined in Clause 4.6 of the BLEP 2012, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

It is furthermore submitted that:

- Strict compliance with the standards would hinder the achievement of the objects of the EP&A Act;
- The proposed development is consistent with the surrounding locality; and
- No unreasonable impacts are associated with the proposed development.

Overall, it is considered that the proposed Clause 4.6 Variation to the existing and maximum Floor Space Ratio control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of the BBLEP 2013.

Clause 4.6 Variation – Floor Space Ratio

Proposed 11-Storey Commercial Office Development
32-34 Ricketty Street, Mascot (Lot 1 and Lot 2 DP 220569)

PART E CONCLUSION

For the reasons outlined in this Clause 4.6 Variation request, it is requested that Bayside Council and the Sydney Eastern City Planning Panel exercise its discretion and find that this Clause 4.6 Variation request adequately addresses the relevant heads of consideration under Subclause 4.6(3) of the BBLEP 2013.

This is particularly the case given the relatively minor nature of the proposed exceedance, as well as the proposal being otherwise compliant with the BBLEP 2013 including the building height development standard, consideration and satisfaction of the objectives of the BBDCP 2013, and the strategic suitability of the proposed development at both a Local and State Government Level.