

Clause 4.6 Variation Request

Botany Bay Local
Environmental Plan 2013 –
Clause 4.4 Floor Space
Ratio

23-25 Church Avenue & 16-18 John St, Mascot

Submitted to Bayside Council

On Behalf of Da Vito Ferro Apartments P/L

November 2020

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1. EXECUTIVE SUMMARY

This request has been prepared to justify a variation to the floor space ratio (FSR) development standard applying to 23-25 Church Avenue and 16-18 John St, Mascot (site).

Variation of the FSR development standard is required to facilitate and achieve better outcomes for and from the proposed thirteen (13) storey mixed use development, with four (4) levels of basement car parking.

Under the *Botany Bay Local Environmental Plan 2013*, the maximum floor space ratio applying to the site is 3.2:1.

For abundant caution, an amended Clause 4.6 Request has been prepared based on the inclusion of the proposed through site link and parts of the walkways as GFA. The proposed development, as amended, inclusive of the proposed through site link and parts of the galleries as GFA, has a total gross floor area (GFA) of 10,969.7 sqm, equating to an FSR of 3.71:1. This equates to a variation of 0.51:1.

Compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of this application because the development is demonstrably consistent with the objectives of the FSR development standard, notwithstanding the proposed variation.

Strict adherence to the FSR development standard is also unreasonable because the development standard has been virtually abandoned in the Mascot Station Precinct. There have been 15 occasions where the FSR development standard has been varied in the Mascot Station Precinct with the extent of the variations ranging from 0.23:1 to 1:1. Indeed, the abandonment of the FSR development standard in the Mascot Station Precinct was noted by Bayside Council in their recommendation, subsequently endorsed by the consent authority, to support a 13.8% variation of the development standard at 256 Coward Street, Mascot.

This written request demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. The site is located centrally in the Mascot Town Centre only a short walking distance from the Mascot Train Station. It is one of only two undeveloped sites in the street block bound by Church Ave, John St, Bourke St and O'Riordan St. The proposed development is compatible with the bulk and scale of development in the locality and has been skilfully designed to preserve the privacy of neighbouring apartments while optimising solar access and natural ventilation and providing high levels of amenity for future occupants. The proposed development creates a new publicly accessible pedestrian link between Church Ave and John Street which is activated by generously sized ground floor commercial premises. In this regard the proposal promotes good design and amenity of the built environment as well as the orderly and economic use and development of the land, consistent with the objects of the *Environmental Planning and Assessment Act* (EP&A Act). In this regard there are sufficient environmental planning grounds to justify the variation also.

The development proposal is consistent with the objectives of the FSR development standard and the B4 Mixed Use Zone that applies to the land and is therefore in the public interest.

Given that compliance with the development standard is unreasonable, there are sufficient environmental planning grounds to justify varying the development standard and the proposed development is in the public interest, it is appropriate to exercise flexibility in the application of the FSR development standard in the circumstances of this development application.

2. INTRODUCTION

This is a formal request that has been prepared in accordance with clause 4.6 of the *Botany Bay Local Environmental Plan 2013* (the LEP) to justify a variation to the Floor Space Ratio development standard prescribed in Clause 4.4 of that plan. The request relates to a development application submitted to Bayside Council that seeks consent for a 13-storey mixed use development at 23-25 Church Avenue and 16-18 John St, Mascot (the Site).

It is important to acknowledge the fundamental role clause 4.6 plays in any local environmental plan. As confirmed by Commissioner Clay SC in the recent matter *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [73]:

"First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on clause 4.6 for an appropriate planning outcome."

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards to a particular development, and to achieve better outcomes for, and from, development by allowing flexibility in particular circumstances.

As the following request demonstrates, a better environmental planning outcome for the Site would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a) and cl 4.6(4)(a)(i)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b) and cl 4.6(4)(a)(ii)]; and
3. That 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 [clause 4.6(4)].

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Floor Space Ratio (FSR) development standard which is set out in clause 4.4 (2) of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) as follows:

4.4 Floor space ratio

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

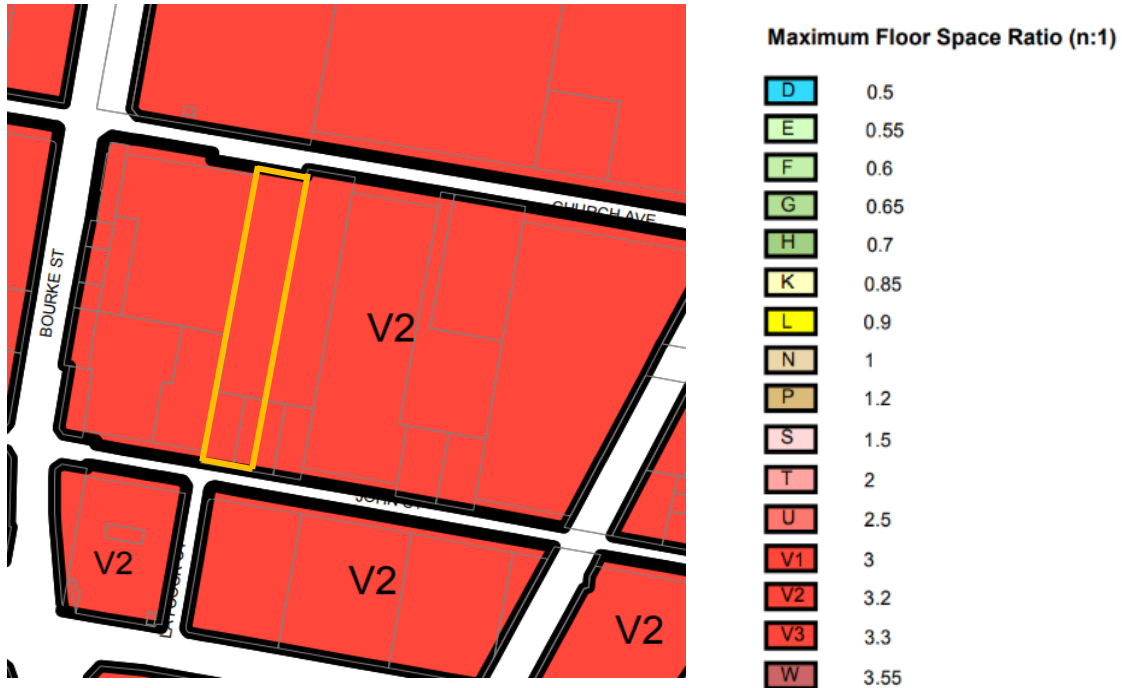


Figure 1: Extract of Floor Space Ratio Map (Source: NSW legislation)

The numeric development standard in this instance is 3.2:1.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

4. EXTENT OF VARIATION

Clause 4.4 (2) of the LEP prescribes a maximum floor space ratio of 3.2:1 for the subject site.

The FSR for each site should be calculated in accordance with Clause 4.5 - *Calculation of floor space ratio and site area* and the definition of *gross floor area* provided in the LEP.

It should be noted that the proposed development includes buildings with gallery corridors, that is, corridors that are designed and constructed as outdoor areas that are adjacent to the external wall of the building which is evident by the fact that those walls are required to be weatherproofed..

GFA is defined in the LEP as follows:

“gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes ...”
(emphasis added)

There have been numerous decisions in the Land & Environment Court which have considered whether to include exposed or open corridors in the calculation of GFA (see *Anderson v City of Sydney Council No. 2* [2015] NSWLEC 1144, *GGD Danks Street P/L and CR Danks Street P/L v Council of the City of Sydney* [2015], *JK Canterbury Holdings Pty Ltd v Marrickville Council* [2016] NSWLEC 1142, *MGT 6 Pty Ltd v The Council of the City of Sydney* [2017] NSWLEC 1211, *Bright Beginnings v Bayside Council* [2017] NSWLEC 1425, *Belvoir Developments Pty Ltd v City of Sydney Council* [2017] NSWLEC 1702, *Parker Logan Property Pty Ltd v Bayside Council* [2017] NSWLEC 1709, *Primo Developments Sydney Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1380, *Landmark Group Australia Pty Ltd v Sutherland Shire Council* [2016] NSWLEC 1577) .

The effect of these decisions is to establish that gallery corridors will be excluded from the calculation of GFA where they are designed and constructed as external areas, and permanently open to the weather, in some meaningful way.

Having regard to these decisions, the gallery corridors shown in the development proposal, which are permanently open to the weather, should be excluded from the calculation of GFA.

Notwithstanding the above, correspondence provided by Bayside Council on 1 October 2020 requested that the gallery corridors within Building A and Building B, and the pedestrian through site link are considered to constitute to FSR.

For abundant caution, and without prejudice, this Clause 4.6 Variation Request has been prepared on the basis that the gallery corridors and the pedestrian through site link are included in the calculation of gross floor area (GFA). On this basis, the amended application seeks consent for a development proposal with a FSR of 3.71:1. This equates to a variation of 0.51:1, or 13.8%.

5. UNREASONABLE OR UNNECESSARY

In this section we demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]).

We have considered each of the ways as follows.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Table 1: Achievement of Objectives of Clause number of LEP.

4.4 Floor Space Ratio	
Objective	Discussion
(a) to establish standards for the maximum development density and intensity of land use	<p>Mascot town centre has been created through the renewal of industrial lands. It is characterised by high-density transit-oriented development around Mascot station. Mascot is located near to the key employment hubs of Port Botany and Sydney airport, and has easy rail access to Sydney CBD.</p> <p>The subject site is centrally located within the town centre and is a suitable location for higher density development, being:</p> <ul style="list-style-type: none"> ▪ 100 metres from the Bourke Road food and beverage strip ▪ 200 metres from Mascot Station and bus-stops and ▪ 300 metres from a local shopping centre. <p>The site is one of two undeveloped lots in this street block. It is demonstrated in(b) and (d) below that the proposed building is compatible with the density and intensity of the surrounding new developments.</p>
(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality	<p>The proposed building is compatible with the bulk and scale of the new development in the surrounding area which establish the character of the locality.</p> <p>The subject site has a key spatial relationship with the adjoining site to the west, 27 Church Ave and 18A John St. The two sites are atypical of allotments in the Mascot town centre having relatively narrow widths of 21.3m (approx.).</p> <p>The Mascot Town Centre Precinct controls within the Botany Bay Development Control Plan 2013, anticipate that the northern portion of the sites will be developed in a paired arrangement with a nil setback at the common boundary and mirrored forms. The DCP does not identify any desired built form outcome for the southern portion of the sites.</p> <p>The development of 27 Church Ave and 18A John St (27 Church Ave) has preceded that of the subject site and establishes the desired future character and an accepted bulk and scale, for a site of that size and dimensions.</p> <p>Figure 2 illustrates the relationship of Building A to the adjoining buildings on Church Ave and demonstrates the compatibility of their</p>

4.4 Floor Space Ratio	
Objective	Discussion
	<p>bulk and scale. The following analysis is provided on the relationship:</p> <ul style="list-style-type: none"> ▪ The height of the top floor roof matches the adjoining building, creating a consistency in scale at Church Ave. ▪ The western portions of each building are built to the common boundary and setback from the opposing side boundary, creating a consistent massing across the sites. ▪ The varied setbacks to the eastern boundary create a stepping in the northern and eastern elevations, reducing their bulk and creating visual interest at Church Ave. ▪ A generous void is provided in the core of the building to maximise natural light and ventilation to the proposed apartments. The void also allows the light well in the eastern façade of 27 Church Ave and the communal open space area at level 11 of that building, to receive sunlight. ▪ The buildings have similar footprints to the adjoining development at 27 Church Ave and 18A John Street. ▪ The subject adjoins 21 Church Ave at its eastern boundary. Development on that site is lower in height (7 storeys) at Church Ave and arranged differently (three rather than two towers). Despite the variation, Building A proposes a suitable relationship with 21 Church St, with the side boundary setbacks separating and offsetting the buildings, preventing crowding above the podium. <p>Figure 3 illustrates the relationship of Building B to the adjoining building on 18A John St and demonstrates the general compatibility of their bulk and scale. The following additional analysis is provided on the relationship:</p> <ul style="list-style-type: none"> ▪ The roof slab height (RL 49.51) of the proposed building matches the adjoining building. ▪ Building B adopts a similar massing strategy to the adjoining building with setting back the upper three storeys to reduce their visual impact. ▪ The southern elevation of Building B includes greater visual articulation than the adjoining building, with varied balcony depths and staggered room projects modulating the façade.
(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,	The subject site is centrally located in the Mascot town centre. The proposed development will not impact on the character of any area that is not or will not be undergoing change. As stated above, the subject site is one of only two undeveloped sites in the street block and has been designed to respond to the emerging character of the area that has been recently developed.
(d) To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other	Buildings A and B reflect the form and massing of the adjoining development on 27 Church Ave and 18A John Street, creating a commonality in built form at Church Ave. The setbacks at the eastern boundary articulate the northern and eastern elevations and provide space between it and adjoining the buildings. Figure 4 illustrates the proposed built form outcome at Church Ave.

4.4 Floor Space Ratio

Objective	Discussion
public places such as parks, and community facilities	Building B has an articulated form, with the upper three floors setback to create a consistency in bulk and scale with the surrounding development.

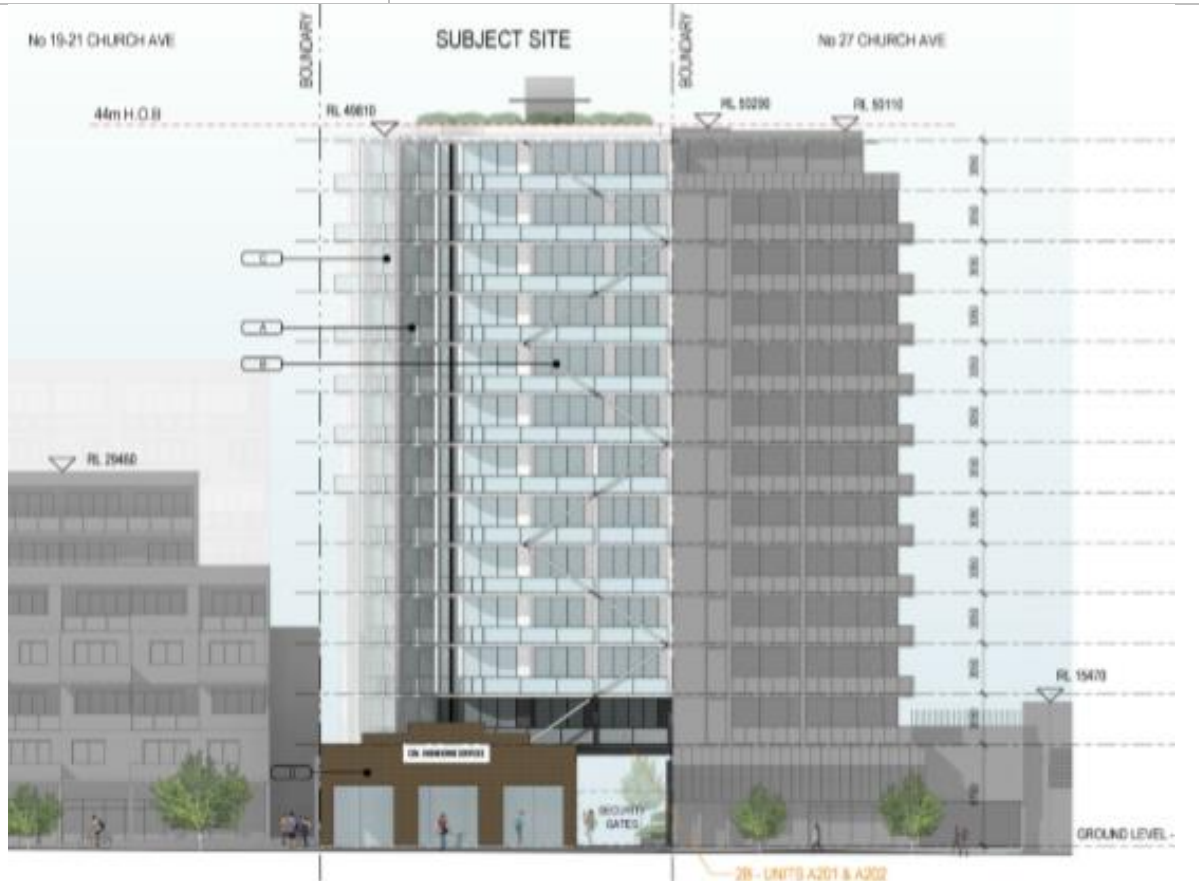


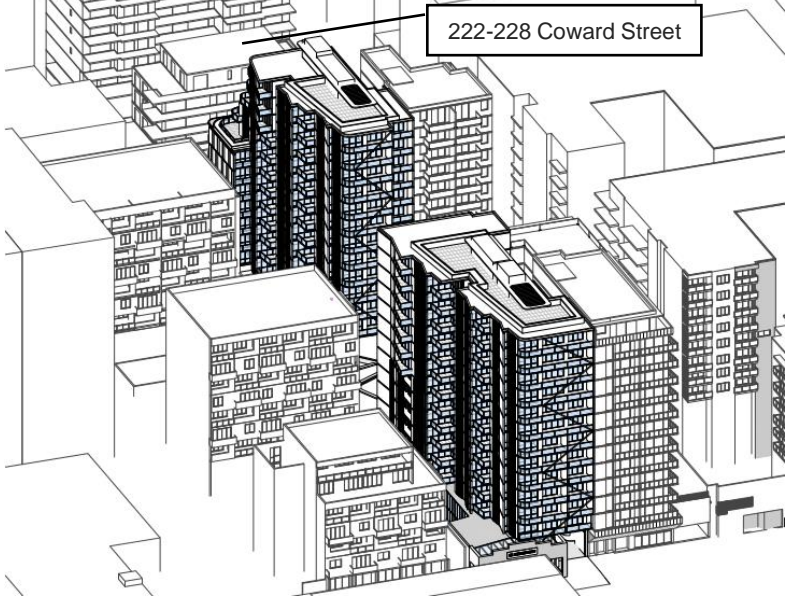
Figure 2 - Church Ave elevation (Source: Squillace Architects)

(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain

The proposed development has been designed to minimise its adverse environmental effects on the street and surrounding properties.

The eastern boundary side setbacks create a corridor that allows sunlight to reach the northern elevation of the central and southern buildings of 19 – 21 Church Ave & 10 – 12 John St. The detailed solar analysis within the development application, identifies that 70.5% of dwellings in that property will receive 2 hours or more of sunlight in mid-winter.

At its southern boundary the site adjoins 222-228 Coward St. The development will result in three second floor dwellings receiving less than 2hrs of sunlight, which equates to a loss of 14% of compliant apartments (Figure 3). This impact on lower floor dwellings is unavoidable and would be no different if the proposal was an exact mirror image of the adjacent development at 27 Church Ave and 18A John Street as was intended when that development was granted approval.

4.4 Floor Space Ratio	
Objective	Discussion
	 <p>Figure 3: Extract of view from the sun diagram (10am mid winter) (Source: Squillace Architects)</p> <p>Protection of solar access is more difficult in high density environments. Additionally, other buildings have been designed without adequate regard to future sunlight access (i.e. prior to the ADG). The affected apartments are vulnerable to loss because of their location on a lower floor of the building. Having regard to that context and that the development is consistent with the overshadowing design guidance in the Apartment Design Guide, in that it does not reduce solar access to the property by more than 20%, the impact is acceptable.</p> <p>It is proposed to retain and restore the brick façade at Church Ave. The façade will serve as a reminder of the industrial past of the site, whilst creating a point of activation and visual interest within the streetscape. Retention of the façade will not hinder pedestrian movement with clear space available for a wide footpath and circulation.</p>
(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site	It has been demonstrated at objective (b), that the bulk and scale of the proposed development is consistent with that of the newly constructed mixed use development at 27 Church Ave. The subject site has a comparable site area to 27 Church Ave and adjoins that site. Accordingly, the extent of development proposed on the subject site is commensurate with the area of the subject site and the adjoining development so as to avoid a situation of overdevelopment.
(g) to facilitate development that contributes to the economic growth of Botany Bay.	The development will contribute to the economic growth of Botany Bay by creating a retail space and warehouse space from which business can operate. Additional retail spaces have been provided along the pedestrian through link which will help to facilitate activation of the street. Future residents of the building will also shop locally, thereby supporting the local economy.

As demonstrated in Table 1 above, the objectives of the FSR development standard are achieved notwithstanding the proposed variation.

As stated in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [87]-[88], there is no requirement that the impacts be neutral or non-existent, rather the test is simply whether the objectives of the development standard are met.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, therefore, compliance with a development standard is demonstrated to be unreasonable or unnecessary on this way alone.

For the sake of completeness, we consider the other recognised ways as follows.

5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

On this occasion we do not believe that the underlying objective or purpose is not relevant to the development and therefore we do not rely on this reason.

5.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

We do not consider the objective would be defeated or thwarted if compliance was required, even though we have demonstrated above that the objectives of the standard are also achieved by the elements that do not comply with the development standard. In this regard we do not rely on this reason.

5.4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or

Numerous previous approvals within the Mascot Town Centre have included variations to the FSR development standard. Examples of previously approved developments in the Mascot Station area that exceed the 3.2:1 FSR control are shown in the table and the map below. Indeed, the fact that the standard has been virtually abandoned by the Council's own actions in the Mascot Station Precinct was noted by Council in the assessment and subsequent approval of DA-2018/1187 at 256 Coward Street, Mascot. The number and extent of variations is significant and demonstrates that the floor space control has been abandoned and therefore compliance is unreasonable and unnecessary. The proposed development has been designed on a first principles approach, with building envelopes developed based on the bulk and scale of surrounding development, as intended by the objectives of the control.

	Site	Approved FSR
1	39 Kent Road, Mascot	4.26:1
2	214 Coward Street, Mascot	4.24:1
3	208-210 Coward Street, Mascot	4.00:1
4	6-8 John Street, Mascot	3.9:1
5	13A Church Avenue, Mascot	3.89:1
6	246 Coward Street, Mascot	3.88:1
7	133-141 O’Riordan Street, Mascot	3.87:1
8	8 Bourke Road & 37 Church Avenue	3.82:1
9	2-4 Haran Street, Mascot	3.79:1
10	7-9 Kent Road, Mascot	3.78:1

11	7 Bourke Street & 30-32 John Street, Mascot	3.75:1
12	19-33 Kent Road, Mascot	3.72:1
13	256 Coward Street, Mascot	3.71:1
14	230 Coward Street, Mascot (25 John Street)	3.60:1
15	671-683 Gardeners Road	3.43:1

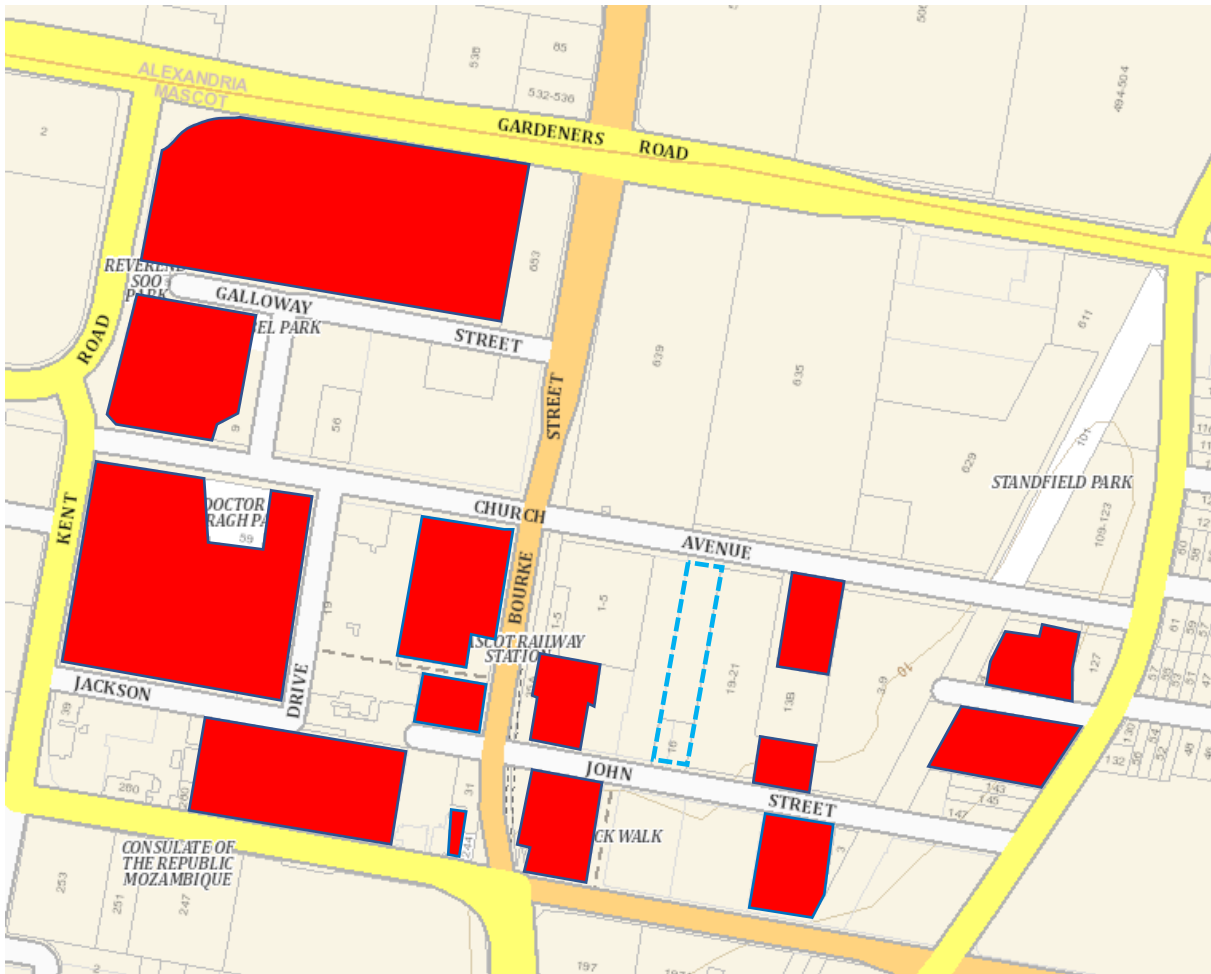


Figure 4 - Sites (shaded red) in Mascot Station Precinct where FSR standard has been varied. Subject site outlined in blue dashes.

5.5. The zoning of the land is unreasonable or inappropriate.

We do not consider the zoning of the land is unreasonable or inappropriate and therefore we do not rely on this reason.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the contravention of the FSR development standard are as set out in the preceding section 5 in detail. They can be summarised as follows:

- The site has a uniquely long and narrow shape that is exacerbated by the adjacent development at 27 Church Ave & 18A-22 John Street. This development was approved with a nil setback to the common boundary in the expectation that the subject site would be developed with a 'mirrored' building. Due to the orientation of the site, however, a mirrored building would not achieve adequate solar access to satisfy the design criteria in the Apartment Design Guide (40% compared with 70%). The proposal has a 'tapered' or 'splayed' footprint to achieve satisfactory solar access. Consequently, the apartments are irregularly shaped and larger than they would otherwise need to be. They are generally 8%-12% larger than the standard prescribed in the Apartment Design Guide.
- A compliant scheme which mirrors the development at 27 Church Ave and 18A John Street would have inferior access to sunlight and inferior natural ventilation and would fail to achieve the design objectives of the Apartment Design Guide and the design quality objectives of *State Environmental Planning Policy 65*.
- The development proposal includes a large and meaningful commercial and retail space on the ground floor which represents approximately 0.23:1 of the total FSR. If it were used for loading and parking, which is typical of many other developments in the locality, it would not constitute FSR. It is more than three times the size of the commercial space on the adjacent site at 27 Church Ave & 18A-22 John Street for example. The proposed commercial and retail space will provide a unique food, beverage and providore providing for a richer and more diverse urban environment. It does not increase the building bulk compared with loading or parking uses on the ground floor, and yet for technical reasons it increases the FSR.
- Development approvals granted within the Mascot Town Centre have created a built form that is different to that envisaged by the FSR development standard. The proposed development is compatible with the bulk and scale of development in the locality including the adjacent development at 27 Church Ave and 18A John St (Development Consent no. DA271/2013 approved by way of a section 34 agreement upheld by the Court in *Olsson & Associates Architects Pty Ltd v City of Botany Bay* [2016] NSWLEC 1254).
- The contravention of the FSR standard does not result in any material adverse environmental impacts to adjoining properties.
- The proposal has been skilfully designed to maximise sunlight access and cross ventilation while preserving privacy to neighbouring properties. In this regard it promotes promote good design and amenity of the built environment (objective (g) of EPA Act).
- The perception of bulk is ameliorated on the upper floors (levels 10 - 13) with a high standard architectural design that incorporates an increased setback so as to be compatible with the surrounding context.
- The proposal facilitates the economic development of a site which is constrained by the adjacent development and ground conditions but otherwise within a town centre location in close proximity to transport infrastructure. In this regard it promotes the orderly and economic use and development of land (objective (c) of EPA Act).

7. PUBLIC INTEREST

In this section we explain how the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out as required by the consent authority pursuant to clause 4.6(4)(a)(ii) of the LEP. As the Court recently reminded in Initial Action (2018), this is what is required, rather than broad statements about general 'public interest considerations' at large.

In section 5 it was demonstrated that the objectives of the development standard for FSR are achieved notwithstanding the variation of the development standard. For the same reasons, we consider that the development as a whole is consistent with these objectives. The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with zone objectives

B4 Mixed Use	
Objectives of Zone	Discussion
To provide a mixture of compatible land uses.	The proposed mixed-use development incorporates high density residential, retail spaces, and a food, drink and retail premises (subject to separate DA) in the converted former warehouse. The uses are low intensity and their operation will not interfere with other 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.	The proposed mixed-use development incorporates retail and commercial premises at ground level. The proposed spaces are a short distance from the Mascot train station and bus services and as such are readily accessible by public or passive private transport.

As demonstrated in Table 2, the proposal is consistent with the objectives of the B4 Mixed Use zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard.

The proposed development will also provide a number of significant other public benefits. The proposal will create employment opportunities during construction stages and the section 7.11 development contributions will have a significant benefit to the community.

The exceedance of the FSR standard does not outweigh the merits of the proposal and its contribution to the nearby Mascot Town Centre and the streetscape since the area was rezoned from industrial to residential.

According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. CONCLUSION

This submission seeks to justify a variation to the FSR development standard that applies to the site under the *Botany Bay Local Environmental Plan 2013*.

As required by clause 4.6 of the *Botany Bay Local Environmental Plan 2013*, the submission has demonstrated that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development because the development achieves the objectives of the development standard and the development standard has been virtually abandoned in the Mascot Station Precinct.
- There are sufficient environmental planning grounds to justify the contravention.
- The development proposal is consistent with the objectives of the FSR development standard and the B4 Mixed Use Zone that applies to the land and is therefore in the public interest.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

ATTACHMENT

Architectural Plans and Solar Impact Analysis -
Squillace Architects