
Bayside Planning Panel

8/05/2018

Item No	6.3
Application Type	Alterations to approved mixed use development
Application Number	2017/1238
Lodgement Date	11 December 2017
Property	42 Church Avenue, Mascot Lot 1 in DP 376752 Lot 3 in DP 376752 Lot 21 in DP1014063
Owner	Karimbla Properties (No. 45) Pty Ltd
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Proposal	Changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm
No. of Submissions	Nil
Cost of Development	\$322,265.00
Report by	Angela Lazaridis- Senior Development Assessment Planner

Officer Recommendation

- 1 That the Bayside Planning Panel supports the variation to clause 4.4 in accordance with the Clause 4.6 justification provided by the applicant and that the proposed development is in the public interest as it is consistent with the objectives of the FSR and the objectives for the B4 Mixed Use zone; and
 - 2 That the Development Application No. 2017/1238 for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot, be approved subject to the conditions attached to this report.
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Attachments

- 1 Planning Assessment Report
- 2 South Elevation Plan
- 3 East Elevation Plan
- 4 Clause 4.6 variation
- 5 Photomontage
- 6 Cover Sheet

Location Plan

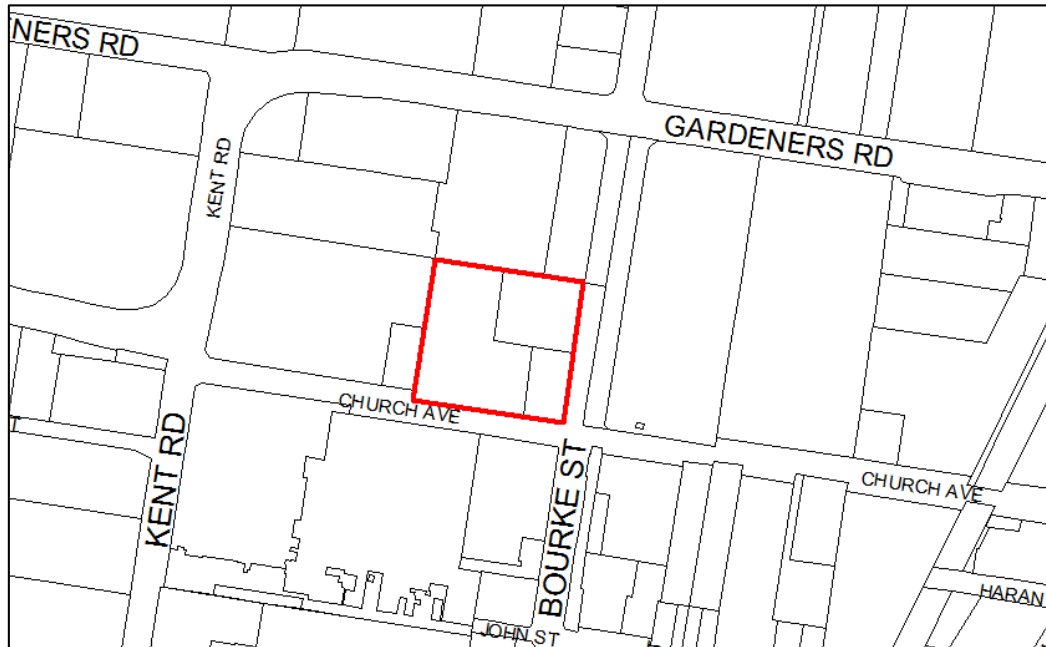


Figure 1: Locality Plan

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	2017/1238
Date of Receipt:	11 December 2017
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Owners:	Karimbla Properties (No. 45) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd
Proposal:	Changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm
Recommendation:	Approve the development, subject to conditions.
Value:	\$322,265.00
No. of submissions:	Nil
Author:	Angela Lazaridis, Senior Development Assessment Planner
Date of Report:	18 April 2018

Key Issues

Bayside Council received Development Application No. 2017/1238 on 11 December 2017 seeking consent for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot.

The application was placed on public exhibition for a fourteen (14) day period from 11 January to 25 January 2018. No objections were received.

Key issues in the assessment of the development application relate to FSR. The approved GFA for the development is 37,903sqm which is an FSR of 3.41:1. The proposed modifications will achieve a GFA of 38,172sqm which is an FSR of 3.44:1. This continues to be less than 10% of the overall calculation and has been calculated to include the additional GFA of 620.3sqm and remove the excess car parking GFA of 351sqm that was previously included in the FSR calculation under DA-2017/1166. The additional GFA/FSR is acceptable in this instance as the bulk of the development will not change and the new retail spaces will be located along the southern side of the development, replacing the surplus car parking and plant areas which are relocated elsewhere within the development. The new retail along Church Avenue will add interest to this elevation and surveillance. The applicant submitted an amended Clause 4.6 variation which has been considered below in Note 1 below.

The proposal has a two car space departure as the ADG/DCP controls require the proposed development to have a total of 432 car parking spaces however the applicant has provided a

total of 430 car parking spaces. The shortfall in car parking would fall within the visitor car parking spaces. Due to its close location to Mascot Station, the departure in visitor car parking spaces is acceptable as the residential and retail car parking spaces comply. A condition of consent has been imposed to allocate the car parking spaces within the development.

The proposal has not provided a waste management plan as the additional retail tenancies increase the size of the waste collection generated. It is indicated on the plans that waste bins have been accommodated within the waste holding room. A waste management plan has been conditioned within the consent.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979 (EPA Act)* and is recommended for approval, subject to conditions of consent.

Recommendation

It is RECOMMENDED:

1. That the Bayside Planning Panel supports the variation to clause 4.4 in accordance with the Clause 4.6 justification provided by the applicant and that the proposed development is in the public interest as it is consistent with the objectives of the FSR and the objectives for the B4 Mixed Use zone; and
2. That the Development Application No. 2017/1238 for changes to the approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot, be approved subject to the conditions attached to this report.

Background

History

Development Application No. 16/150 was approved by the Sydney Central Planning Panel on 20 July 2017 for the construction of a mixed use development incorporating a 4 storey podium with four x 14 storey towers containing residential units, retail space, childcare centre, private recreation facilities, basement and above ground 'sleeved' car parking and 36,819sqm of gross floor area; landscaping and dedication of land along the Church Avenue frontage; construction of southern half of a new east-west street along the northern alignment of the site; landscaping and dedication of a new public park, associated excavation, earthworks and landscaping and land subdivision. The subdivision of the site involves three new lots which include the development site, Church Avenue street widening will be a separate lot and Galloway Street to the north and the public park to be dedicated to Council will be another lot.

The childcare centre was approved with a GFA of 558sqm indoor space and 686sqm of outdoor space. The site was approved with 514 car parking spaces which were allocated to residential, visitors, retail and for the childcare centre. One wash bay was approved on the site.

Section 4.55(1A) Application was lodged with Council for the modification of 101(c) to allow for the extension of construction hours. This application is currently under assessment.

Development Application No. 2017/1166 was approved on 14 December 2017 by the Bayside Planning Panel for alterations to the approved building by deleting the childcare centre and replacement with 29 additional apartments. An FSR of 3.41:1 (37,903sqm) was approved for the site with a total of 369 units. The number and size of the retail tenancies did not change as part of this proposal.

Proposal

The proposed development seeks consent for changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm.

A new tenancy is proposed along Bourke Street and new tenancies are proposed along Church Avenue. The proposal will result in a total of 15 retail tenancies on the ground floor with each tenancy having sanitary facilities. The addition of the retail tenancies along Church Avenue will result in a loss of car parking spaces and reconfiguration of plant areas on the southern side of the ground floor plan, with minor modifications to the basement level. The development was approved with excess car parking spaces so the additional car parking spaces generated by the additional retail of 22 car spaces can be accommodated within the development without any changes to the residential car spaces approved in the previous application. Any surplus car parking spaces have been reduced to close to compliance.

Due to the ground floor reconfiguration, the approved gym which was connected to the swimming pool area has now been moved to Level 1 therefore there is an increase of 95sqm to this area to accommodate for this space. The existing swimming pool and associated facilities have been reconfigured to accommodate the addition retail tenancy along Bourke Street.

The additional retail space results in an increase in the waste collection bins which have been accommodated within the approved waste holding room. The proposal will not alter the approved loading dock area.

The proposal will alter the southern elevation of the building to replace the predominantly solid walls along the ground floor and replace with the shop tenancies.



Figure 1. Proposed Southern Elevation along Church Avenue

There is no change to the approved units on the ground floor and above.

The car parking breakdown is provided as follows:

Unit Type	Proposed Mix	RMS Rate	Minimum Required	Rounded	Proposed Break Up
1 Bedroom	115	0.6/unit	69.0	69.0	
2 Bedroom	177	0.9/unit	159.3	160.0	
3 Bedroom	77	1.4/unit	107.8	108.0	
Units Subtotal			336	337	337
Visitors	369	1 per 7	52.7	53.0	51
Retail (sqm)	1037	1 per 25 sqm (DCP rate)	41.5	42.0	42
			430	432	430

Site Description

The subject site is legally known as 42 Church Avenue, Mascot and forms three parcels of land described as Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.

The subject site is located on the western side of Bourke Street between Gardeners Road to the north, Kent Road to the west and Church Avenue to the south. Galloway Street is a new street currently under construction and runs along the northern boundary of the site. The site is approximately 120 metres to the north-west of Mascot Train Station.

The site has a total area of 11,104sqm with a 108.5 metres street frontage to Church Avenue, a 101.5 metre street frontage to Bourke Street, a 101.9 metres western boundary length and a 109.1 metre northern boundary length. The site is generally flat.

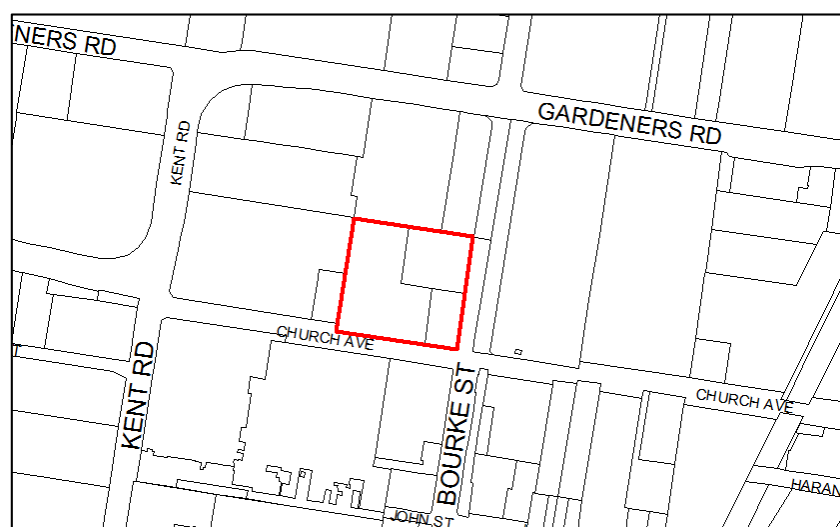


Figure 2. Locality Plan

The site is currently demolished of all structures with excavation begun for the basement car parking level. The corner of the south-western side of the development is impacted by road widening. The site is located within the 20-25 ANEF zone and is within 25 metres of the Sydney Trains easement for underground rail (Airport Tunnel).

The site is within the B4 Mixed Use zone of the BBLEP 2013 and is within Urban Block 1 of the Mascot Station Town Centre Precinct within Part 9A of the BBDCP 2013. The table below lists the relevant details of the surrounding mixed-use developments.



Figure 3. Subject site

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development application.

Development Application No. 16/150 was approved as integrated development as the proposal approved basement car parking that would intercept the groundwater table. General Terms of Approval were placed in the consent relating to excavation of the basement level. The subject application does not change the envelope of the basement level approved therefore the subject application is not integrated development and does not need to be referred to Water NSW.

State Environmental Planning Policy (Infrastructure) 2007

The development is in close proximity to the rail corridor, with Mascot Station located close to the site. The original application for the built form was referred to Sydney Trains who provided appropriate conditions relating to excavation near the rail corridor. As the subject application does not propose any changes to the excavation of the basement and the building, the application did not need to be referred to Sydney Trains for comments.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was not required to provide a revised BASIX Certificate as the proposed changes relate only to the retail and car parking area.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

Consideration of SEPP No. 55 was carried out within the assessment of DA-16/150. Therefore SEPP No. 55 does not need to be assessed as part of this proposal.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Development Application. Due to the proposed modifications being predominately encased within the approved built form approved under DA-16/150, the development application was not required to be presented to the Design Review Panel. The applicant submitted a Design Verification Statement on 26 April 2018 which has been conditioned in the consent.

Botany Bay Local Environmental Plan 2013 (BBLEP)

The provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013 have been considered in the assessment of the Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	-	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposal involves additional retail premises are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B4 zone: <ul style="list-style-type: none">• <i>To provide a mixture of compatible land uses.</i>• <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport</i>

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
		<i>patronage and encourage walking and cycling.</i>
What is the height of the building?	N/A	<p>The maximum building height for the site is 44 metres.</p> <p>The approved development within DA-16/150 was approved with a maximum building height of 45.8 metres (RL 51).</p> <p>There is no change to the height of the development as part of this application.</p>
What is the proposed FSR?	No- Refer to Note 1	<p>The maximum FSR allowed on the site is 3.2:1 (35,532sqm).</p> <p>DA-2017/1166 approved a GFA of 37,903sqm which was an FSR of 3.41:1. This was contributed from the additional GFA from the new units and the additional car parking over the car parking requirement stipulated within the ADG.</p> <p>The proposed development will increase the FSR to 3.44:1 (38,172sqm). This results in a variance of 7.5%.</p> <p>The applicant has provided a Clause 4.6 variation to the additional GFA and this has been discussed within Note 1 below.</p>
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	Yes	The subject site is affected by RMS widening of the splay on the corner of Church Avenue and Bourke Street. This was considered in DA-16/150 and does not change this as part of this application.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils (ASS) 6.2 – Earthworks 6.3 – Stormwater management 6.8 - Airspace operations 6.9 – Development in areas subject to aircraft noise 6.15 – Active Street Frontages</p>	N/A	DA-16/150 approved the built form therefore ASS, excavation, stormwater management, airspace, aircraft noise, and active street frontage has been considered as part of that application and as there is no amendments relating to these issues, assessment of these issues is not warranted.

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.16 – Design excellence	Yes	<p>The bulk, scale and height of the proposed development has been established as part of DA-16/150 however the street façade along Church Avenue has improved by providing active street frontage to this elevation.</p> <p>The Applicant has adequately addressed the recommendations of the DRP and the proposed development is considered to be consistent with Clause 6.16 of BBLEP 2013.</p>

Note 1 – Variation to the FSR development standard

Clause 4.4 of the BBLEP 2013 specifies that the FSR of a building may not exceed the maximum FSR specified on the relevant FSR map. The maximum FSR for this site is 3.2:1. Development Application No. 2017/1166 was approved with an FSR of 3.41:1 and resulted in a GFA of 37,903sqm. At the time the FSR was calculated with an additional 28 car spaces however it was noted that there was an error in the calculation as there were an additional 25 car spaces that were not included as at the time of determination.

The current proposal seeks to increase the overall GFA by 269sqm to a total GFA of 38,172sqm or 3.44:1 which includes the additional retail and the relocation of the gym. The addition of the retail and gym results in a total GFA of 620.3sqm however the excess car parking GFA of 351sqm that was approved in DA-2017/1166 has been removed as the proposed retail uses will utilise these spaces in association with the tenancies hence the additional 269sqm GFA for the development.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) 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...

(3) 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.

The Applicant has provided a Clause 4.6 variation to justify contravening the FSR standard. Their justification is provided below:

“Subject Proposal

It is proposed to convert excess car parking GFA - identified above – into retail GFA. In the process, excess car parking is to be eliminated. The table below provides a summary of the proposed new Floor Space Ratio and Gross Floor Area.

Proposed GFA of buildings	38,172 sqm
Proposed GFA of excess car parking	Nil
Proposed GFA total	38,172 sqm
Proposed FSR total	3.44:1

Matters for consideration:

a) Is the requirement a development standard?

The variation sought relates to the FSR of the proposal. The FSR control is a development standard, as it provides a numerical restriction to a particular aspect of the development, rather than a prohibition.

b) Is the development standard excluded from the operation of this clause?

Clause 4.6(8) outlines the exclusions of the operation of Clause 4.6, which are:

- *Complying Development;*
- *Statement Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;*
- *Clause 4.3(2A) – Height controls for certain sites on land in Zone R3 Medium Density Residential or Zone R4 High Density Residential.*
- *Clause 4.4B(3) – Exceptions to floor space ratio in Zone R3 and Zone R4.*
- *Clause 5.4 - Controls relating to miscellaneous permissible uses.*

As the proposal does not relate to any of these types of developments, the variation to the Clause 4.4(2) FSR control sought is not excluded from the operation of Clause 4.6.

c) What is the underlying objective or purpose of the standard?

The objectives of the FSR control in clause 4.4 are as follows:

- a) to establish standards for the maximum development density and intensity of land use,*
- b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- 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,*
- 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,*
- e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- g) to facilitate development that contributes to the economic growth of Botany Bay.*

The proposal is consistent with the above objectives, in that:

- a) The proposal results in an overall development density of 3.44:1. This is 2,640m² above the maximum GFA, being 7.5% over the permissible density control. A variation of this scale in the context of the site and surrounding development will be unperceivable in the overall scale and built form of the development. Importantly, the proposed additional floor space is contained entirely within the existing built form. Therefore, the additional floor space does not contribute to an increase in bulk and scale of the building.*
- b) The site is located within the Mascot Town Centre. The 2,640m² variation to the FSR control will not alter the built form from what can be supported in a compliant development. The proposal has been designed to provide a much more appealing frontage to Church Avenue, by deleting car parking and providing retail tenancies along the frontage. Accordingly, the proposed development will still deliver a built form that is compatible with the bulk and built form envisaged by the desired future character planned for the Mascot Town Centre.*
- c) The site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use town centre. There are a number of developments proposed or under construction surrounding the site.*
- d) The departure from strict compliance with the numerical FSR control will not result in bulk or scale that is unacceptable. The proposed development includes the creation of a public park and will also ensure its successful funding to meet the Council's requirements. The amenity of this park will not be adversely affected by the proposed additional gross floor area of the development.*
- e) The proposal will have a positive relationship with the new public park and will not have any adverse impacts on its amenity.*
- f) The proposed development has an overall site area of 11,104m². The scale of the site has been reflected in the scale and built form proposed for the development. The scale of the non-compliance with the FSR control in the context of the overall development is reflected in the variation being approximately 7.5% above the permissible density control. However, all additional floor space proposed is located entirely within the existing approved built form on the site.*
- g) The proposal will deliver a total of 369 apartments and retail. This will positively contribute to the economic development and viability of the Mascot Town Centre through:
 - a. Redeveloping a currently under-utilise site; and*
 - b. Providing new retail space within the Mascot town centre area.**

d) Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

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. These are:

- 1. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development are achieved notwithstanding noncompliance with the standard.*
- 2. Establish that the underlying objective or purpose is not relevant to the development with the consequences that compliance is unnecessary.*
- 3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required that the consequences 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 unreasonable and unnecessary.*
5. *Establish that 'the zoning of particular land' was 'unreasonable or unnecessary' so that 'a development standard for that zoning was also unreasonable or unnecessary as it was applied to that land' and that compliance with the standard in that case would also be unreasonable and unnecessary.*

In applying the test in *Wehbe v Pittwater Council*, only one of the ways of establishing the development standard is unreasonable and unnecessary needs to be demonstrated. As outlined in Section 3(c) above, the proposed development is able to achieve the objectives of the height development standard, even though the development results in a noncompliance with the numerical standard. On this basis, the development is able to demonstrate that the development is unreasonable and unnecessary in accordance with the first way Preston CJ outlines in *Wehbe v Pittwater Council*.

In the recent decision of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 Pain J upheld the decision of Pearson C which indicated that a variation must be justified on sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

However, in a the more recent case of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 Preston CJ stated that the consent authority did not have to be satisfied directly that compliance with each development standard was unreasonable and unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request adequately addressed the matter in Clause 4.6(3)(a) that compliance with each development standard was unreasonable and unnecessary. This decision indicates a move away from the more prescriptive approach to consideration of Clause 4.6 variation requests taken in *Four2Five v Ashfield Council*.

Applying Preston's CJ decision in *Randwick City Council v Micaul*, the proposed development is able to demonstrate that strict compliance with the numerical FSR development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- *Meet the objectives of the development standard as outlined in Section 3(c);*
- *Meet other built form development standards;*
- *Satisfactorily address all relevant planning considerations as detailed in section 3(e); and*
- *There are various other examples of previously approved developments in the Mascot Station area that exceed (significantly in some instances) the 3.2:1 FSR control. These are shown in the table below.*

The table above clearly demonstrates that the development standard has been virtually abandoned or destroyed in this instance. It also demonstrates that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary, and that the underlying object of purpose would be defeated or thwarted if compliance was required, and therefore compliance is unreasonable.

Site	FSR
39 Kent Road Mascot	4.26:1
214 Coward Street Mascot	4.24:1
208-210 Coward Street Mascot	4.00:1
246 Coward Street Mascot	3.88:1

8 Bourke Street and 37 Church Avenue Mascot	3.82:1
2-4 Haran Street Mascot	3.79:1
7-9 Kent Road Mascot	3.78:1
7 Bourke Street and 30-32 John Street Mascot	3.75:1
19-33 Kent Road Mascot	3.72:1
230 Coward Street Mascot (25 John Street)	3.6:1

e) Are there sufficient environmental planning grounds to justify contravening the development standard?

The variation to the FSR development standard is considered well founded and reasonable for the following reasons:

- *The proposed development is consistent with the underlying objectives and purpose of the development standard as demonstrated above;*
- *The proposed non-compliance relates to the LEP 2013 provisions for FSR will not have any adverse impact on the bulk and scale of the development when viewed from surrounding properties;*
- *Despite the non-compliance with the FSR control, the proposal is consistent with the scale of development anticipated in the locality. This is ensured by proposing all additional gross floor area within the existing approved building envelope;*
- *The proposal will support the delivery of a communal open space with public access during the day, which will positively contribute to the establishment of the Mascot Town Centre; and*
- *The provision of some additional car parking beyond the minimum required can be supported on traffic planning grounds, as evident in the Traffic Report prepared by Arup.*

f) Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

As outlined throughout the SEE and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone.

The principle aim of the proposal is to provide new residential apartments. The provision of a new public park is also proposed. The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties in any way, as the proposed additional gross floor area is contained entirely within the existing building envelope. The proposed FSR is considered to be acceptable particularly when balanced against the benefits of the project which are:

- *Provision of new housing and employment opportunities on land zoned for this purpose within the short term.*
- *Development of an under-utilised site (being currently occupied by industrial warehouses) identified for future mixed use development (being zoned B4 Mixed Uses).*
- *Contribution to the delivery of key infrastructure, namely the public park.*
- *The proposal will provide positive social outcomes through the provision of on-site housing, child care facilities and a new public park.*

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

The proposed variation to the FSR development standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-compliance is acceptable in the context of the overall development of the Mascot area and the broader Bayside Council area.

h) The public benefit of maintaining the development standard.

It is considered that due to the absence of any demonstrable adverse impacts arising from the proposed development, adherence to the subject development standards would hinder the attainment of the objectives of the Act. Further, the proposed development is consistent with the objectives of the development standard. Therefore, such adherence would not be in the public interest in this instance."

Council Officer's comments:

An assessment of the applicant's Clause 4.6 variation has been carried out. As demonstrated, there is a variation in FSR by 7.5% (2,640sqm) from the development standard. The proposed development has been designed so that the additional retail tenancies and the relocation of the gym area are encompassed within the approved development. These modifications will not impact on the amenity of the neighbouring properties. The site has reduced the surplus of car parking originally approved which have been included within the GFA calculations and now results in a departure of two car parking spaces.

The applicant's justification is generally agreed with. The proposed modification to increase the FSR is considered acceptable as it will not increase the visual bulk or scale of the approved development and will not result in any adverse impacts on the locality.

The objectives of the FSR development standard and the B4 mixed use zone continue to be consistent with the assessment that was carried out in DA-16/150 and in DA-2017/1166. The proposal will add an additional 525sqm of retail space to an approved built form which provides employment opportunities.

The exceedance in FSR is not out of character with other approved developments in the immediate area which exceed the FSR standard and the exceedance in FSR does not result in any adverse external impacts.

The table above clearly demonstrates that the development standard has been virtually abandoned or destroyed in this instance. It also demonstrates that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary, and that the underlying object of purpose would be defeated or thwarted if compliance was required, and therefore compliance is unreasonable.

Based on the above, the variation is not contrary to the public interest and is able to be supported.

Botany Bay Development Control Plan (BBDCP) 2013

The most relevant and applicable clauses of the BBDCP 2013 are considered in the assessment of this development proposal and are provided below.

Control	Proposed	Complies (yes/no)
3A Parking and Access		
3A.2. Parking Provisions of Specific Uses <u>Residential visitor spaces (within ADG)</u> 1 space/ 7 units (53 req.) <u>Commercial (retail)</u> 1 space / 25sqm (42 req.) <u>Service Bays</u> 1/100 units (4 req.) Note: 50% of service bays to be designed for MRV or larger) Note: No requirement for car wash bays	<u>Visitor spaces</u> 51 car parking spaces provided therefore 2 space departure. <u>Commercial</u> The original development was approved with 20 retail spaces for a retail space of 512sqm. The proposal provides a total of 42 car parking spaces for retail which complies. <u>Service Bays</u> Service vehicle: No change to the 1 space provided Car wash bay: No change to the 1 space provided Service vehicles: No change to the 1 MRV space provided (Building B)	No – Refer to Note 2 below Yes N/A
3A.3.1 Car Park Design Pedestrian entrances and exits shall be separated from vehicular access paths.	The waste collection and servicing has been approved on the ground floor parking level under Building B. This arrangement is acceptable as there is no change to the management and storage method approved for the development. However the condition of consent requiring a waste management plan has been imposed in the consent. Pedestrian entrances and exits are separated from vehicular access paths as approved in DA-16/150.	Yes
C40 The waste collection point shall be designed to: (i) Allow waste loading operations to occur on a level surface away from parking areas, turning areas, aisles, internal roadways and ramps; and (ii) Provide sufficient side and vertical clearance to allow the lifting arc for automated bin lifters to remain clear of any walls or ceilings and all service ducts, pipes and the like.	The development was approved with the garbage holding room located under Building B. The site continues to allow an MRV garbage truck within the site and also continues to contain the bulky waste storage area and separate retail/commercial waste room. Additional bins have been provided within the waste holding room.	Yes

Control	Proposed	Complies (yes/no)
3A.3.2 Bicycle Parking C1-C5 To comply with AS2890.3 & AUSTROADS. (i.e. 10% of the required amount of car parking = 44)	There is no change in the 68 bicycle spaces provided within the development.	N/A
3A.3.4 On-site Loading & Unloading C1-C11 1 service bay/50dwgs (50% to be Medium Rigid Vehicle (MRV) or larger) (4 req.)	No change to the approved arrangement of 1 loading bay for MRV.	N/A
3I Crime Prevention Safety & Security		
Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	Appropriate conditions have been recommended in the consent.	Yes
3L Landscaping and Tree Management		
General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	There is a slight decrease in landscaping along the southern side of the site to accommodate access to the retail tenancies. This loss is acceptable.	Yes
3N Waste Minimisation & Management		
General Requirements; Residential Development; Mixed Use Development.	No waste management plan has been submitted as part of this application. Condition imposed in consent. Plans demonstrate that the approved waste room has accommodated additional bins for the retail tenancies.	Conditioned

Note 2 – Departure in Car Parking

The *Guide to Traffic Generating Developments* requirement for residential visitor spaces is calculated on a rate of 1 car space per 7 dwellings for sites within 800 metres of a train station. The approved and proposed development required visitor car parking spaces of 53 spaces. The proposal will remove car parking spaces to accommodate the retail spaces on the ground floor therefore the number of visitor car parking spaces has been reduced from 53 car parking spaces to 51 car parking spaces. This is a departure of 2 car parking spaces. The applicant has provided a justification relating to car parking departure as follows:

'In respect of car parking proposed in the DA, we note that the visitor car parking requirement generated by the proposal is for 53 car parking spaces. It is proposed to provide 51 car parking spaces, which results in a shortfall of 2 visitor car parking spaces. However, this is considered to be acceptable given that the site is located within the town centre of Mascot and is in close proximity to public transport options. It is also noted that there is public street car parking opportunities in the area. The proposal complies with all other car parking allocations, including retail. It is likely that visitors to the site may also offer custom to the retail tenancies in the building. The shortfall of two visitor car parking spaces represents 3.8% variation from the requirement, which is insignificant. Overall, for these reasons, the proposed variation is considered to be acceptable.'

The location of the site in close proximity to the Mascot Train Station is beneficial for the departure in visitor car parking spaces as there are alternate methods of transportation to the site. The development complies with the residential and retail car parking requirements for the development therefore the loss of two visitor car parking spaces is acceptable. It is anticipated that the majority of the walk-ins to the retail shops would be residents from the surrounding development or workers from the commercial towers to the south of the site. In this instance, the departure in car parking is acceptable.

Part 4C – Residential Flat Buildings

Part 4C.7 – Mixed Uses

Part 4C.7 – Mixed Use of the Botany Bay DCP 2013 provides controls relating to mixed use developments. The additional retail tenancies along Bourke Street and Church Avenue are located at the ground level and comprise of individual sanitary facilities within each tenancy. The ground floor car parking level was approved with a large waste room to accommodate the waste accumulated from the retail uses. The garbage room has not been separated into residential and retail waste therefore the waste management plan is to be amended to provide this detail. There was no waste management accompanying this development application therefore an appropriate condition has been imposed within the consent.

The additional retail spaces along Church Avenue encourages street activation along this street while the additional retail tenancies along Bourke Street will continue to comply with the street activation requirement under the BBLEP 2013. Previously Church Avenue only had the vehicular access and entry lobbies to Building B and C. The design of the parking areas and loading facilities continue to comply with no substantial changes to the loading bay and the approved car parking located within the ground floor car parking level on its southern side have been removed to accommodate the retail spaces. The changes as part of this application will not create any conflict with any other uses within the approved development. The height of ceilings for the retail spaces continue to comply with the ADG requirement of 3.3 metres as specified above in the report. The car parking spaces attributed to the retail spaces will be appropriately allocated and linemarked prior to the relevant Occupation Certificate. Additionally, the lobbies on the Church Avenue frontage will continue to be distinguished from the retail tenancies and easily identifiable from the public.

Part 9A – Mascot Station Town Centre Precinct

The site is located within Urban Block 1 of the Mascot Station Town Centre. Part 9A.3.2 of the BBDCP 2013 provides guidelines relating to the desired future character of Urban Block 1. In regards to street character, the DCP states that Church Avenue is to be a predominantly residential street with wide pathways. Additionally, the interface between the public and private domain at ground level is to be visually open, with multiple building and dwelling entries and no continuous blank facades is encouraged.

The original development was approved at the Church Avenue frontage with a solid façade with the exception of the two lobbies for the individual buildings. The proposal will provide glass frontages for the retail and will break the solidness of this elevation. While the desired future character does state that Church Avenue is to be predominantly residential, the proposal wraps the retail around the corner from Bourke Street. The shops will provide a better visual aesthetic outcome on Church Avenue which currently has vehicular access and loading dock entries on the opposite side of the site. It will integrate with the existing retail (café) at the adjoining property to the west at 52 Church Avenue. The Church Avenue frontage will enhance pedestrian interest and provide safety and security by ensuring passive surveillance of the public domain. Therefore the proposal for retail along Church Avenue is appropriate in this instance.

S.4.15(1)(a)(iv) - Provisions of regulations

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

S.4.15(1)(b) - Likely Impacts of Development

As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

S.4.15(1)(c) - Suitability of the site

The proposal does not alter the conclusions that were resolved and approved within DA-16/150 and DA-2017/1166. The additional retail does not impact on the flooding, zone of influence with the railway and the groundwater issues.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts are not considered to be significant given the relatively small scale of the development and no significant planning issues are raised that would warrant the refusal of the proposed development.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a fourteen (14) day period from 11 January to 25 January 2018. No submissions were received during the public notification period.

S.4.15(1)(e) - Public interest

It is considered that granting approval to the proposed development will have no significant adverse impact on the public interest.

Section 7.11 Contributions (Former Section 94 Contributions)

The Section 7.11 Contributions, as calculated within the Section 94 Contributions Plan 2016, for the proposed development are calculated as follows:

Retail Tenancies

The proposal results in an additional retail GFA of 525sqm. Table 9.2 of the Plan provides a breakdown of the calculation of employees per the development type. The proposed development is categorised as row shops with frontage to a street. Therefore the GFA for one employee is 22.3sqm. The calculation is as follows:

$$525\text{sqm} / 22.3\text{sqm} = 24 \text{ workers}$$

The indexed rate for workers within Mascot Station Precinct is \$2704.01. The calculation is as follows:

$$24 \text{ workers} \times \$2,704.01 = \$64,896.25$$

Therefore the total contribution payable for the proposal is **\$64,896.25**. A breakdown of the figure is provided in the condition of consent. The applicant is to pay an indexed rate of the contribution based on the timing of the payment.

Conclusion

Development Application No. 2017/1238 was received on 11 December 2017 for changes to approved development to add retail tenancies to the Church Avenue and Bourke Street frontages, increasing the retail floor area from 512sqm to 1,037sqm at 42 Church Avenue, Mascot.

The development departs from the FSR development standard. A Clause 4.6 variation has been provided with the development application and it is considered that the variation is well founded. Other issues relating to car parking and waste management have been addressed within the report or through conditions of consent.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context. Therefore, the application is recommended for approval, subject to conditions of consent.

Attachment

Schedule 1 – Conditions of Consent

Premises: 42 Church Avenue, Mascot

DA No: DA-2017/1238

GENERAL CONDITIONS

- 1 The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Dated / Received by Council
A1001- Cover Sheet- Rev 1	Aplus design	Dated 29 November 2017; Received 26 April 2018
A1002 – Parking Level- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1003 – Ground Level Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1004 – Level 1 Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1009 – South Elevation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1010- East Elevation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
A1011- Section 1 Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017

A1012- GFA Calculation Plan- Rev 1		Dated 29 November 2017; Received 11 December 2017
FI-200- Ground Floor Landscape Plan- Rev G	Urbis	Dated 7 December 2017; Received 11 December 2017
FI-201- Ground Floor Landscape Plan- Rev G		Dated 7 December 2017; Received 11 December 2017
FI-202- Ground Floor Landscape Plan- Rev G		Dated 7 December 2017; Received 11 December 2017
FI-203- Ground Floor Landscape Plan- Rev F		Dated 7 December 2017; Received 11 December 2017
FI-204- Ground Floor Landscape Plan- Rev F		Dated 7 December 2017; Received 11 December 2017

Reference Document(s)	Author	Dated / Received by Council
Amended DA Access Report	Wall to Wall Design Consulting	Dated 11 December 2017; Received 11 December 2017
Clause 4.6 variation	Meriton Group	Received 11 December 2017
Construction Management Plan	Meriton Group	Dated August 2017; Received 11 December 2017
Traffic Impact Assessment- Rev E	ARUP	Dated 11 December 2017; Received 11 December 2017
Landscape Report	Urbis	Dated 7 December 2017; Received 11 December 2017
Design Verification Statement	Aplus design	Dated 26 April 2018; Received 26 April 2018

- 2 No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.
- 3 This Consent relates to land in Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 4 The consent given does not imply that works can commence until such time that:
 - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) The consent authority; or,
 - (ii) An accredited certifier; and,
 - b) The person having the benefit of the development consent:
 - (i) Has appointed a principal certifying authority; and
 - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 5 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- 6 The proposed development shall comply with the following:
- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (i) Stating that unauthorised entry to the work site is prohibited;
 - (ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - (iii) The Development Approval number; and
 - (iv) The name of the Principal Certifying Authority including an afterhours contact telephone number.
 - (b) Any such sign is to be removed when the work has been completed.
- 7 A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, must be prepared on surrounding properties. A copy of the dilapidation report together with the accompanying photographs shall be given to the above property owner/s, and a copy lodged with Principal Certifying Authority prior demolition. The extent of the Dilapidation Survey is to be prepared by a practising Structural Engineer having regard to foundations/structures of the locality
- 8 Prior to the commencement of any demolition, excavation or remediation works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
 - (b) The name and permit number of the owner-builder who intends to do the work;
 - (c) The Council also must be informed if: -
 - (i) A contract is entered into for the work to be done by a different licensee; or
 - (ii) Arrangements for the doing of the work are otherwise changed.
- 9 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: - (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve,

- b) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
 - c) Permit to install temporary ground anchors in public land,
 - d) Permit to discharge ground water to Council's stormwater drainage system,
 - e) Permit for roads and footways occupancy (long term/ short term),
 - f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
 - g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
 - h) Permit to place skip/waste bin on footpath and/or nature strip, and
 - i) Permit to use any part of Council's road reserve or other Council lands.
- 10 Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 11 Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.
- The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:
- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
 - b) Induction training for on-site personnel;
 - c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
 - d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
 - e) Disconnection of Gas and Electrical Supply;

- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
 - g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
 - h) Waterproofing of any exposed surfaces of adjoining buildings;
 - i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
 - j) Working hours, in accordance with this Development Consent;
 - k) Confinement of demolished materials in transit;
 - l) Proposed truck routes, in accordance with this Development Consent;
 - m) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
 - n) Sewer – common sewerage system ad08.
- 12 A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or re-use on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP). This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- 13 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:
 - to a public sewer; or
 - if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- 14 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 15 Prior to the commencement of any works, the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the

Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.

- 16 The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- 17 Shaker pads and a wheel washer are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 18 Prior to the commencement of excavation or any building works, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 19 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practicing engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- 20 The applicant must prior to the issue of any Construction Certificate, pay the following fees:
 - (a) Development Control \$875.00
 - (b) Footpath Crossing Deposit \$629,880.00 (See below)
 - (c) Section 94 Contributions \$64,896.25 (See below)
- 21 Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of **\$629,880.00** (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
- 22 Bayside Council being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans, a contribution of **\$64,896.25** is payable as calculated below:

City of Botany Bay Section 94 Contributions Plan 2016

The s94 contributions (as of April 2018) for the additional retail GFA is as follows:

- | | |
|---|-------------|
| a) Community Facilities- Citywide | \$9,977.38 |
| b) Recreation Facilities- Mascot Precinct | \$1,012.28 |
| c) Recreation Facilities- Citywide | \$43,339.72 |

d) Transport Management- Citywide	\$4,083.58
e) Transport Management- Mascot	\$5,739.73
f) Administration	\$743.73

TOTAL: \$64,896.25

The total Section 94 Contribution of **\$64,896.25** is to be paid to Council prior to the issue of any Construction Certificate.

Note: The Section 94 Contributions are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

- 23 A Waste Management and Minimisation Plan is to be submitted to the Principal Certifying Authority prior to the issue of the relevant Construction Certificate. Plans and specifications for the storage room for waste and recyclable materials shall be submitted. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 24 The drawings for the construction certificate for the basement and above ground car parking levels shall show the following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	69 spaces
0.9 space /2 bed unit	160 spaces
1.4 space /3 bed unit	108 spaces
1 visitor space / 7 dwellings	51 spaces
Retail Spaces	42 spaces
TOTAL PROVIDED	430 spaces

This information is to be provided prior to the issue of the relevant Construction Certificate.

- 25 Prior to the issue of the relevant construction certificate, to ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
 - Negotiate with the utility authorities (e.g. AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:

- i. The additional load on the system, and
- ii. The relocation and/or adjustment of the services affected by the construction.

26 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

27 A Construction Management Program shall be submitted to, and approved by the Private Certifying Authority prior to the issue of any Construction Certificate. The program shall detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
- b) The proposed phases of construction works on the site and the expected duration of each construction phase,
- c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
- d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
- g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
- h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,

- i) Proposed protection for Council and adjoining properties, and
- j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
- k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

28 Prior to the issue of any Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:

- a) be prepared by a RMS accredited consultant,
- b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,
- c) during construction, if access from **Bourke Road** is required, the applicant is to submit documentary evidence to the Principal Certifying Authority that the required Section 138 Consent under the Roads Act, 1993 has been issued by the New South Wales Roads and Maritime Services, and
- d) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

29 Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.

DURING WORKS

30

- a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other

locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.

- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
- 31 During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 32 During Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.
- 33 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
- 34 Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 35 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- a) SafeWork NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
 - b) Protection of the Environment Operations Act 1997.
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.

- 36 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 37 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines; and
 - b) Protection of the Environment Operations Act 1997; and
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
- All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
- 38 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) The Soil and Water Management Plan;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 39 During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.
- 40 All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 41 Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
- 42 The following shall be complied with during construction and demolition:
- (a) Construction Noise
 - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - (b) Level Restrictions
 - (i) Construction period of 4 weeks and under:

- (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
 - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
- (c) Time Restrictions
 - (i) Monday to Friday 07:00am to 06:00pm
 - (ii) Saturday 08:00am to 01:00pm
 - (iii) No demolition or construction to take place on Sundays or Public Holidays.
- (d) Silencing
 - (i) All possible steps should be taken to silence construction site equipment.
- 43 During excavation and construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.
- 44 During excavation and construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

- 45 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows and appropriately linemarked:
 - a) 337 residential spaces
 - b) 51 visitors spaces
 - c) 42 retail spaces
 - d) 1 carwash bay located on the ground floor car park level
- 46 Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.

- 47 All services (Utility, Council, etc.) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 48 Prior to the issue of any Occupation Certificate, street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- 49 Prior to the issue of any Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
- (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
 - (b) A Floor Space Ratio (FSR) of 3.44:1 as approved under this Development Consent No. 2017/1238 and height of 51m AHD as approved under this Development Consent No. 16/150, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
 - (c) The development as built, stands within Lot 1 in DP 376752, Lot 3 in DP 376752 and Lot 21 in DP1014063.
- 50 The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 51 Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development and installed in a manner not be inconsistent with the relevant provisions of the Building Code of Australia (BCA).
- 52 Prior to the issue of the relevant Occupation Certificate, evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
- 53 A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
- 54 Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

- 55 A separate application is to be submitted for the use and fit out of the retail tenancies.

- 56 No roller shutters are to be installed to any of the commercial shopfronts that front Bourke Street and Church Avenue.
- 57 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 58 All intruder alarms shall be fitted with a timing device in accordance with the requirements of Regulation 12A of the Noise Control Act, 1975, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems.
- 59 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
- 60 Ongoing maintenance of the road verges and footpaths and nature strips in Church Avenue and Galloway Street shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
- 61 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 62 Any air conditioning units (where possible) shall comply with the following requirements:
- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.

- (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (ii) Before 7 am or after 10 pm on any other day.
- 63 All loading and unloading associated with the retail tenancy is to be undertaken within the ground floor of Building B.
- 64 No garbage collection associated with the retail premises is permitted between 10pm and 6am.
- 65 The collection of garbage associated with the residential premises shall be restricted to 6am to 6pm Monday to Sunday.
- 66 All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.



GENERAL NOTES:

NOTE FOR BRICKWORK:

- ELECTRICAL CUPBOARDS ON RESIDENTIAL FLOORS ARE HOLLOW CORE DOORS LINED ON INSIDE FACE WITH 13mm FIRE GRADE PLASTERBOARD WITH A PERIMETER SMOKE SEAL.

F.R.L. FOR WALLS

PARKING LEVELS:

- LIFT SHAFT 120/120/120
- COLUMNS 120/120/120
- FIRE STAIRS 120/120/120
- VENTILATION & GARBAGE SHAFTS -120/120
- MAIN GARBAGE ROOM DOOR -120/30
- FIRE STAIR DOORS -60/30

COMMERCIAL & RETAIL LEVELS:

- LIFT SHAFT 180/180/180
- FIRE STAIRS 180/180/180
- VENTILATION & GARBAGE SHAFTS -180/180
- FIRE STAIR DOORS -60/30

RESIDENTIAL LEVELS:

- LIFT SHAFT 90/90/90
- FIRE STAIRS 90/90/90
- VENTILATION & GARBAGE SHAFTS -90/90
- UNIT ENTRY DOORS -60/30
- GARBAGE ROOM DOORS -60/30
- FIRE STAIR DOORS -60/30
- APARTMENT DIVIDING WALLS & WALLS BOUNDING PUBLIC AREAS AND CORRIDORS -60/60

N.B: ALL F.R.L'S RELATE TO NON-LOADBEARING CONSTRUCTION AS APPLICABLE. CODE DEFINITION (STRUCTURAL ADEQUACY/INTEGRITY/INSULATION)

NOTE: MATERIALS TO MATCH EXISTING DA FINISHES

1	29.11.17	DA		
ISSUE	DATE	REVISION	BY	

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PROJECT:

SPECTRUM

42 CHURCH AVE, MASCOT

DRAWING TITLE:

South Elevation

DATE:	SCALE:	DRAWING No:	REV:
DRAWN BY:	PROJECT NO:	A1009_C	1
Author	801		

DO NOT SCALE

USE FIGURED DIMENSIONS AT ALL TIMES. IF IN DOUBT CHECK WITH MERTON GROUP PTY. LTD. CONTRACTOR/S TO CHECK AND VERIFY ALL LEVELS, DATUMS AND DIMENSIONS ON SITE AND SHALL REPORT ANY DISCREPANCIES OR OMISSIONS TO MERTON GROUP PTY. LTD. PRIOR TO COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE.

NORTH

CC ISSUE

7/12/2017 9:52:52 AM

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GENERAL NOTES:

NOTE FOR BRICKWORK:

- ELECTRICAL CUPBOARDS ON RESIDENTIAL FLOORS ARE HOLLOW CORE DOORS LINED ON INSIDE FACE WITH 13mm FIRE GRADE PLASTERBOARD WITH A PERIMETER SMOKE SEAL.

F.R.L. FOR WALLS

PARKING LEVELS:

- LIFT SHAFT 120/120/120
- COLUMNS 120/120/120
- FIRE STAIRS 120/120/120
- VENTILATION & GARBAGE SHAFTS -120/120
- MAIN GARBAGE ROOM DOOR -120/30
- FIRE STAIR DOORS -60/30

COMMERCIAL & RETAIL LEVELS:

- LIFT SHAFT 180/180/180
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- FIRE STAIR DOORS -60/30

RESIDENTIAL LEVELS:

- LIFT SHAFT 90/90/90
- FIRE STAIRS 90/90/90
- VENTILATION & GARBAGE SHAFTS -90/90
- UNIT ENTRY DOORS -60/30
- GARBAGE ROOM DOORS -60/30
- FIRE STAIR DOORS -60/30
- APARTMENT DIVIDING WALLS & WALLS BOUNDING PUBLIC AREAS AND CORRIDORS -60/60

N.B: ALL F.R.L'S RELATE TO NON-LOADBEARING CONSTRUCTION AS APPLICABLE. CODE DEFINITION (STRUCTURAL ADEQUACY/INTEGRITY/INSULATION)

ISSUE	DATE	REVISION	BY
1	29.11.17	DA	

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PROJECT:

SPECTRUM

42 CHURCH AVE, MASCOT

DRAWING TITLE:

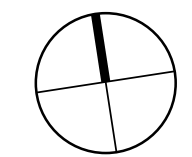
East Elevation

DATE:	SCALE:	DRAWING No:	REV:
DRAWN BY:	PROJECT NO:	A1010_C	1
Author	801		

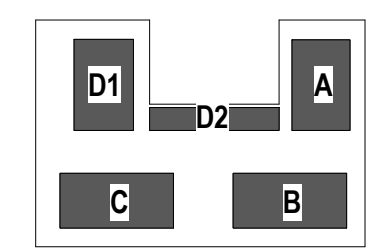
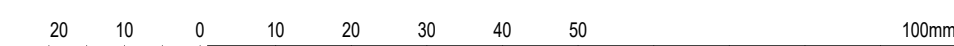
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NORTH



CC ISSUE



1. INTRODUCTION

Clause 4.6 of Botany Bay Local Environmental Plan 2013 (LEP) provides the framework for consideration of proposed variations to development standards.

This Clause 4.6 variation request forms part of the Statement of Environmental Effects supporting documentation for a proposed Development Application that seeks approval for alterations (adding retail tenancies) to a mixed use development with residential apartments and retail spaces.

The details of the proposal are included in Section 3 of the Statement of Environmental Effects report prepared by Meriton and reflected on the proposed plans prepared by A+ Architecture.

2. PROPOSED VARIATION

The proposal seeks variation to Clause 4.4(2) of the LEP, which states:

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.

The Floor Space Ratio Map nominates a maximum Floor Space Ratio (FSR) of 3.2:1 for the site. FSR is defined in the LEP as follows:

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Gross Floor Area is defined in the LEP as follows:

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:

- (a) the area of a mezzanine, and*
 - (b) habitable rooms in a basement or an attic, and*
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
- but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
 - (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above.*

3. EXTENT OF VARIATION

a) Existing Approval and DA 2017/1166

Existing approved DA 2016/150 that applies to the site has been approved with the Floor Space Ratio and Gross Floor Area shown in the table below (note this is being corrected by Section 96 amendment in respect of Condition 130 in DA16/150).

A further application (DA 2017/1166) is currently being considered by Council that seeks an increase to the Floor Space Ratio and Gross Floor Area. This is also shown in the table below.

	DA 2016/150 Approved	DA 2017/1166 Under Consideration
GFA of buildings	35,532 sqm	37,552 sqm
GFA of excess car parking	1,287 sqm (99 x 13 sqm car spaces)	351 sqm (27 x 13 sqm car spaces)
GFA total	36,819 sqm	37,903 sqm
FSR total	3.32:1	3.41:1

It is noted above that the total GFA for both DAs includes excess car parking.

b) Subject Proposal

It is proposed to convert excess car parking GFA - identified above – into retail GFA. In the process, excess car parking is to be eliminated. The table below provides a summary of the proposed new Floor Space Ratio and Gross Floor Area.

Proposed GFA of buildings	38,172 sqm
Proposed GFA of excess car parking	Nil
Proposed GFA total	38,172 sqm
Proposed FSR total	3.44:1

4. MATTERS FOR CONSIDERATION

a) Is the requirement a development standard?

The variation sought relates to the FSR of the proposal. The FSR control is a development standard, as it provides a numerical restriction to a particular aspect of the development, rather than a prohibition.

b) Is the development standard excluded from the operation of this clause?

Clause 4.6(8) outlines the exclusions of the operation of Clause 4.6, which are:

- Complying Development;
- Statement Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Clause 4.3(2A) – Height controls for certain sites on land in Zone R3 Medium Density Residential or Zone R4 High Density Residential.

- Clause 4.4B(3) – Exceptions to floor space ratio in Zone R3 and Zone R4.
- Clause 5.4 - Controls relating to miscellaneous permissible uses.

As the proposal does not relate to any of these types of developments, the variation to the Clause 4.4(2) FSR control sought is not excluded from the operation of Clause 4.6.

c) What is the underlying objective or purpose of the standard?

The objectives of the FSR control in clause 4.4 are as follows:

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (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,*
- (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,*
- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (g) to facilitate development that contributes to the economic growth of Botany Bay.*

The proposal is consistent with the above objectives, in that:

- a) The proposal results in an overall development density of 3.44:1. This is 2,639m² above the maximum GFA, being 7% over the permissible density control. A variation of this scale in the context of the site and surrounding development will be unperceivable in the overall scale and built form of the development. Importantly, the proposed additional floor space is contained entirely within the existing built form. Therefore, the additional floor space does not contribute to an increase in bulk and scale of the building.
- b) The site is located within the Mascot Town Centre. The 2,639m² variation to the FSR control will not alter the built form from what can be supported in a compliant development. The proposal has been designed to provide a much more appealing frontage to Church Avenue, by deleting car parking and providing retail tenancies along the frontage.

Accordingly, the proposed development will still deliver a built form that is compatible with the bulk and built form envisaged by the desired future character planned for the Mascot Town Centre.

- c) The site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use town centre. There are a number of developments proposed or under construction surrounding the site.

- d) The departure from strict compliance with the numerical FSR control will not result in bulk or scale that is unacceptable. The proposed development includes the creation of a public park and will also ensure its successful funding to meet the Council's requirements. The amenity of this park will not be adversely affected by the proposed additional gross floor area of the development.
- e) The proposal will have a positive relationship with the new public park and will not have any adverse impacts on its amenity.
- f) The proposed development has an overall site area of 11,104m². The scale of the site has been reflected in the scale and built form proposed for the development. The scale of the non-compliance with the FSR control in the context of the overall development is reflected in the variation being approximately 7% above the permissible density control. However, all additional floor space proposed is located entirely within the existing approved built form on the site.
- g) The proposal will deliver a total of 369 apartments and retail. This will positively contribute to the economic development and viability of the Mascot Town Centre through:
 - Redeveloping a currently under-utilise site; and
 - Providing new retail space within the Mascot town centre area.

d) Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

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. These are:

- 1) *Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development are achieved notwithstanding noncompliance with the standard.*
- 2) *Establish that the underlying objective or purpose is not relevant to the development with the consequences that compliance is unnecessary.*
- 3) *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required that the consequences 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 unreasonable and unnecessary.*
- 5) *Establish that 'the zoning of particular land' was 'unreasonable or unnecessary' so that 'a development standard for that zoning was also unreasonable or unnecessary as it was applied to that land' and that compliance with the standard in that case would also be unreasonable and unnecessary.*

In applying the test in *Wehbe v Pittwater Council*, only one of the ways of establishing the development standard is unreasonable and unnecessary needs to be demonstrated. As outlined in Section 3(c) above, the proposed development is able to achieve the objectives of the height development standard, even though the development results in a non-compliance with the numerical standard. On this basis, the development is able to demonstrate that the development is unreasonable and unnecessary in accordance with the first way Preston CJ outlines in *Wehbe v Pittwater Council*.

In the recent decision of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* Pain J upheld the decision of Pearson C which indicated that a variation must be justified on sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

However, in a the more recent case of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* Preston CJ stated that the consent authority did not have to be satisfied directly that compliance with each development standard was unreasonable and unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request adequately addressed the matter in Clause 4.6(3)(a) that compliance with each development standard was unreasonable and unnecessary. This decision indicates a move away from the more prescriptive approach to consideration of Clause 4.6 variation requests taken in *Four2Five v Ashfield Council*.

Applying Preston's CJ decision in *Randwick City Council v Micaul*, the proposed development is able to demonstrate that strict compliance with the numerical FSR development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- Meet the objectives of the development standard as outlined in Section 3(c);
- Meet other built form development standards;
- Satisfactorily address all relevant planning considerations as detailed in section 3(e); and
- There are various other examples of previously approved developments in the Mascot Station area that exceed (significantly in some instances) the 3.2:1 FSR control. These are shown in the table below.

The table above clearly demonstrates that the development standard has been virtually abandoned or destroyed in this instance. It also demonstrates that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary, and that the underlying object of purpose would be defeated or thwarted if compliance was required, and therefore compliance is unreasonable.

Site	FSR
39 Kent road, Mascot	4.26:1
214 Coward Street, Mascot	4.24:1
208-210 Coward Street, Mascot	4.00:1
246 Coward Street, Mascot	3.88:1
8 Bourke Road & 37 church Avenue	3.82:1
2-4 Haran Street, Mascot	3.79:1

7-9 Kent Road, Mascot	3.78:1
7 Bourke Street & 30-32 John Street, Mascot	3.75:1
19-33 Kent Road, Mascot	3.72:1
230 Coward Street, Mascot (25 John Street)	3.60:1

e) Are there sufficient environmental planning grounds to justify contravening the development standard?

The variation to the FSR development standard is considered well founded and reasonable for the following reasons:

- The proposed development is consistent with the underlying objectives and purpose of the development standard as demonstrated above;
- The proposed non-compliance relates to the LEP 2013 provisions for FSR will not have any adverse impact on the bulk and scale of the development when viewed from surrounding properties;
- Despite the non-compliance with the FSR control, the proposal is consistent with the scale of development anticipated in the locality. This is ensured by proposing all additional gross floor area within the existing approved building envelope;
- The proposal will support the delivery of a communal open space with public access during the day, which will positively contribute to the establishment of the Mascot Town Centre; and
- The provision of some additional car parking beyond the minimum required can be supported on traffic planning grounds, as evident in the Traffic Report prepared by Arup.

f) Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

As outlined throughout the SEE and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone.

The principle aim of the proposal is to provide additional retail space. The provision of a new public park is also proposed.

The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties in any way, as the proposed additional gross floor area is contained entirely within the existing building envelope. The proposed FSR is considered to be acceptable particularly when balanced against the benefits of the project which are:

- Provision of new housing and employment opportunities on land zoned for this purpose within the short term.
- Development of an under-utilised site (being currently occupied by industrial warehouses) identified for future mixed use development (being zoned B4 Mixed Uses).
- Contribution to the delivery of key infrastructure, namely the public park.
- The proposal will provide positive social outcomes through the provision of on-site housing, child care facilities and a new public park.

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

The proposed variation to the FSR development standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-compliance is acceptable in the context of the overall development of the Mascot area and the broader Bayside Council area.

h) The public benefit of maintaining the development standard.

It is considered that due to the absence of any demonstrable adverse impacts arising from the proposed development, adherence to the subject development standards would hinder the attainment of the objectives of the Act. Further, the proposed development is consistent with the objectives of the development standard. Therefore, such adherence would not be in the public interest in this instance.

5. CONCLUSION

The proposal seeks variation to the FSR development standard. The proposal will have no adverse impacts and will have no conflict with any matters of State or regional environmental planning significance. Nor does it conflict with any State Planning Policies or Ministerial directives.

Overall, it is considered that the proposed variation to the FSR control (Clause 4.4) can be justified on the following grounds:

- The proposed variation is minor in scale, resulting in a 7% variation to the FSR control.
- The proposed additional gross floor contained entirely within the existing approved building envelope.
- There are numerous other examples of developments that have been approved in the Mascot Station area that exceed the maximum FSR – some significantly.
- The proposal will result in a development, which remains consistent with the objectives of the B4 Mixed Use zone of the site.
- The proposal remains consistent with the objectives of the FSR development standard.
- The proposed development will deliver a public park, which will positively contribute to the residential amenity of the Mascot Town Centre.
- The proposal is consistent with all other relevant development standards.
- The public benefit of maintaining the development standards in this particular proposal is not put at risk by allowing a departure in this particular instance.

On the basis of the above, support should be given to the proposed variation to the FSR development standard under the provisions of clause 4.6 of the LEP.



DEVELOPMENT APPLICATION

PROPOSED AMENDMENTS TO RESIDENTIAL DEVELOPMENT

6-7 BOURKE ST, MASCOT

DRAWING LIST

DRAWING LIST - PROPOSED DA			
Sheet Number	Rev	Sheet Name	Rev Date
A1001_C	1	Cover Sheet	29.11.17
A1002_C	1	Parking Level	29.11.17
A1003_C	1	Ground Level	29.11.17
A1004_C	1	Level 1	29.11.17
A1009_C	1	South Elevation	29.11.17
A1010_C	1	East Elevation	29.11.17
A1011_C	1	Section 1	29.11.17
A1012_C	1	GFA Calculation	29.11.17

DEVELOPMENT SUMMARY

SITE AREA 11104sqm

	DA 10.2017.1166.1 (Subject to approval)	Proposed DA
GFA	37,552 sqm	38,172 sqm
Excess Car Parking GFA	351 sqm (13 sqm per Parking Space)	0 sqm
Total GFA	37,903 sqm	38,172 sqm (37,135 Residential sqm ; 1,037 Retail sqm)
Total FSR	3.41:1	3.44:1
		269 sqm increased GFA 0.02:1 increased FSR

CARPARKING SCHEDULE

	DA 10.2017.1166.1 (Subject to approval)				Proposed DA			
Residential		Proposed mix	Car Space Required	Proposed Car Space		Proposed mix	Car Space Required	Proposed Car Space
	1 Bedroom	115 Units	69		1 Bedroom	115 Units	69	
	2 Bedroom	177 Units	160		2 Bedroom	177 Units	160	
	3 Bedroom	77 Units	108		3 Bedroom	77 Units	108	
	Total	369 Units	337	364	Total	369 Units	337	337
Visitor			53	53			53	51
Retail		512sqm	21	21		1037sqm	42	42
Total			411	438			432	430

GENERAL NOTES:

NOTE FOR BRICKWORK:

- ELECTRICAL CUPBOARDS ON RESIDENTIAL FLOORS ARE HOLLOW CORE DOORS LINED ON INSIDE FACE WITH 13mm FIRE GRADE PLASTERBOARD WITH A PERIMETER SMOKE SEAL.

F.R.L. FOR WALLS

PARKING LEVELS:

- LIFT SHAFT -120/120/120
- COLUMNS -120/120/120
- FIRE STAIRS -120/120/120
- VENTILATION & GARBAGE SHAFTS -120/120
- MAIN GARBAGE ROOM DOOR -120/30
- FIRE STAIR DOORS -60/30

COMMERCIAL & RETAIL LEVELS:

- LIFT SHAFT 180/180/180
- FIRE STAIRS 180/180/180
- VENTILATION & GARBAGE SHAFTS -180/180
- FIRE STAIR DOORS -60/30

RESIDENTIAL LEVELS:

- LIFT SHAFT -90/90/90
- FIRE STAIRS -90/90/90
- VENTILATION & GARBAGE SHAFTS -90/90
- UNIT ENTRY DOORS -60/30
- GARBAGE ROOM DOORS -60/30
- FIRE STAIR DOORS -60/30
- APARTMENT DIVIDING WALLS & WALLS BOUNDING PUBLIC AREAS AND CORRIDORS -60/60

N.B: ALL F.R.L'S RELATE TO NON-LOADBEARING CONSTRUCTION AS APPLICABLE. CODE DEFINITION (STRUCTURAL ADEQUACY/INTEGRITY/INSULATION)

1	29.11.17	DA	
ISSUE	DATE	REVISION	BY



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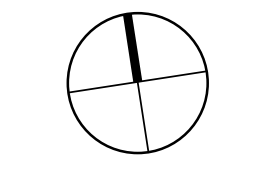
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SPECTRUM
42 CHURCH AVE, MASCOT

DRAWING TITLE:
Cover Sheet

DATE:	SCALE:	DRAWING No:	REV:
DRAWN BY: Author	PROJECT NO: 801	A1001_C	1

DO NOT SCALE
USE FIGURED DIMENSIONS AT ALL TIMES. IF IN DOUBT CHECK WITH MERTON GROUP PTY. LTD. CONTRACTOR/S TO CHECK AND VERIFY ALL LEVELS, DATUMS AND DIMENSIONS ON SITE AND SHALL REPORT ANY DISCREPANCIES OR OMISSIONS TO MERTON GROUP PTY. LTD. PRIOR TO COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE.

NORTH



CC ISSUE

