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Development

**CLAUSE 4.6 EXCEPTION TO DEVELOPMENT
STANDARD**

Floor Space Ratio Variation

**4 Gilbert street
Manly**

Clause 4.6 (Floor Space Ratio)
4 Gilbert street Manly

Clause 4.6 Exception to Development Standard

4 Gilbert street Manly

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1 Introduction

This clause 4.6 report accompanies a development application for alterations and additions to an existing dwelling at 4 Gilbert street Manly

2 Clause 4.4 Floor Space Ratio - Variation Request

FSR requirement: 75% or 128.83sqm

Proposed FSR: 100% or 171.8sqm

Variation Requested: 25%

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Manly Local Environmental Plan 2013. The development standard for which a variation is sought is that of Floor Space Ratio restriction contained within Clauses 4.4. The proposed alterations and additions seek to increase the GFA for the site with the addition of a third storey to the development to create a dwelling of a size that is suitable for the owners. The subject site is small in area (171.7sqm) and compliance with the prescribed FSR is difficult to achieve. The GFA is non-compliant by 42.97sqm and is considered to be a minor non compliance to the development standard. It is noted that variations within the Manly locality have been approved with much greater non compliances.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (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.*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

- (i) the applicants written request has adequately address the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

A detailed assessment has been carried out below:

2.1 What is the Development Standard proposed to be varied?

Clause 4.4 of the Manly LEP provides the following development standard in relation to Floor Space Ratios.

(2) 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.

Objectives of clause 4.4

The objectives of clause 4.4 are as followed:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been utilised as a guide

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the Manly LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Objective A: *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed alterations and additions to the dwelling has been designed to be compatible with the character of the area as shown in the statement of environmental effects. The development is low impact compared to the surrounding developments and is considered to be consistent with the established bulk and scale of the area.

Objective B: *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: The proposed development is built over the existing footprint of the building and as such the impact on landscaping is minimal. It is noted that the development adjoins a public reserve that is heavily vegetated and will not impact the landscaping features of the reserve.

Objective C: *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: As mentioned above the development is appropriate for the area and the character and landscape of the area. It is considered that the proposed design of the dwelling will not be visually intrusive from a public place and results in a good design outcome.

Objective D: *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The building has been designed to take advantage of the existing footprint of the building and to minimise the impact on the site and the adjoining public domain.

Objective E: *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment: The development does not impact the viability of the nearby business zone.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.4 of Manly Council LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required however it is noted that the development proposed to be of a size that is similar to surrounding dwellings in the locality and due to the small nature of the site the FSR does not comply.

4. Has the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council regularly grants consent for development despite a non compliance with the Floor Space Ratio clause 4.4.

One such development is 124 Woodland Street BALGOWLAH which approved a FSR non compliance with a 30.70% variation.

It is considered that Council will often approve FSR non compliances on small sites with site constraints such as the proposed development.

5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

***Object (b)** to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The proposed development is general alterations and additions to an existing dwelling that will allow the owners of the dwelling to utilise their house without the need to demolish and rebuild.

The proposed extension has been designed to minimise the impact on the site and on the adjoining neighbours while providing a visually attractive dwelling that promotes a good design for the streetscape.

***Object (g)** to promote good design and amenity of the built environment,*

Comment: The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. It is noted that the design of the alterations and additions is in context to the future character of the area.

Clause 4.6 (Floor Space Ratio)
4 Gilbert street Manly

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the Residential zone.

2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

3 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner due to the site constraints. It is considered that the development results in a good planning and design outcome for the property and the community.