



Corona Projects

DEVELOPMENT APPLICATION

CI4.6 VARIATION REQUEST – 4.3A Special height provisions

Alterations and additions to an existing dwelling house

131A Seaforth Crescent, Seaforth

September 2025

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PROJECT DETAILS

Client: Ms. Jennifer Zhang
Subject land: 131A Seaforth Crescent, Seaforth
Lot Description: 2/-/DP562588
Proposed development: Alterations and additions to an existing dwelling house
Clause: 4.3A Special height provisions
Extent of Variation 2.70%
The report is prepared by Pavel Zaytsev
Bachelor of Planning (WSU)

The report is reviewed by Mathew Fortunato
Bachelor of Architecture and Environment (USYD)

I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

Issue	Description	Date	Written By	Reviewed By
1	Draft report issued for comment	10/09/2025	PZ	MF

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the alterations and additions to an existing dwelling house and instillation of an inclinator at 131A Seaforth Crescent, Seaforth.

More specifically, the development application seeks consent for the following works.

- Construction of an inclinator platform on screen piers.
- Construction of an inclinator cage and rail at the northern portion of the site.
- Demolition of internal and external walls of the existing dwelling house.
- Demolition and construction of a new roof for the existing dwelling house.
- Alterations and additions to the existing dwelling house.

Clause 4.3A Special height provisions within the Manly Local Environmental Plan 2013 (MLEP 2013) relates to the maximum height of a building and states the following:

(2) Despite clause 4.3 (2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.

The proposed development is permissible with consent is permissible within the C3 Environmental management zone. The highest point of the road (Seaforth Cres) adjoining the centre point of the front lot boundary is RL 62.85 as per the site survey plan. The proposed development seeks consent for an inclinator with the carriage cage and an associated privacy screen 1800mm high with an RL 64.55 which results in 2.70% variation to the principal development standard and a non-compliance of 1.7m.

The documentation upon which this report has been prepared is as follows:

Description	Date	Author
Architectural Plan	June 2024	Corona Projects Pty Ltd

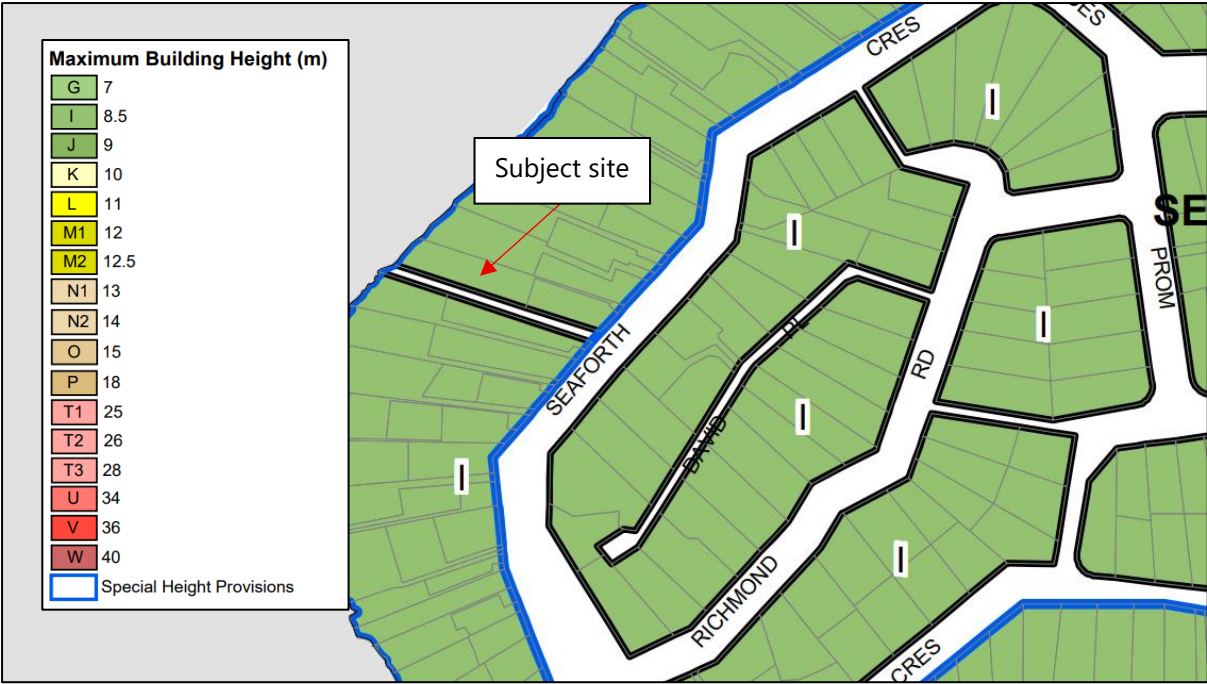
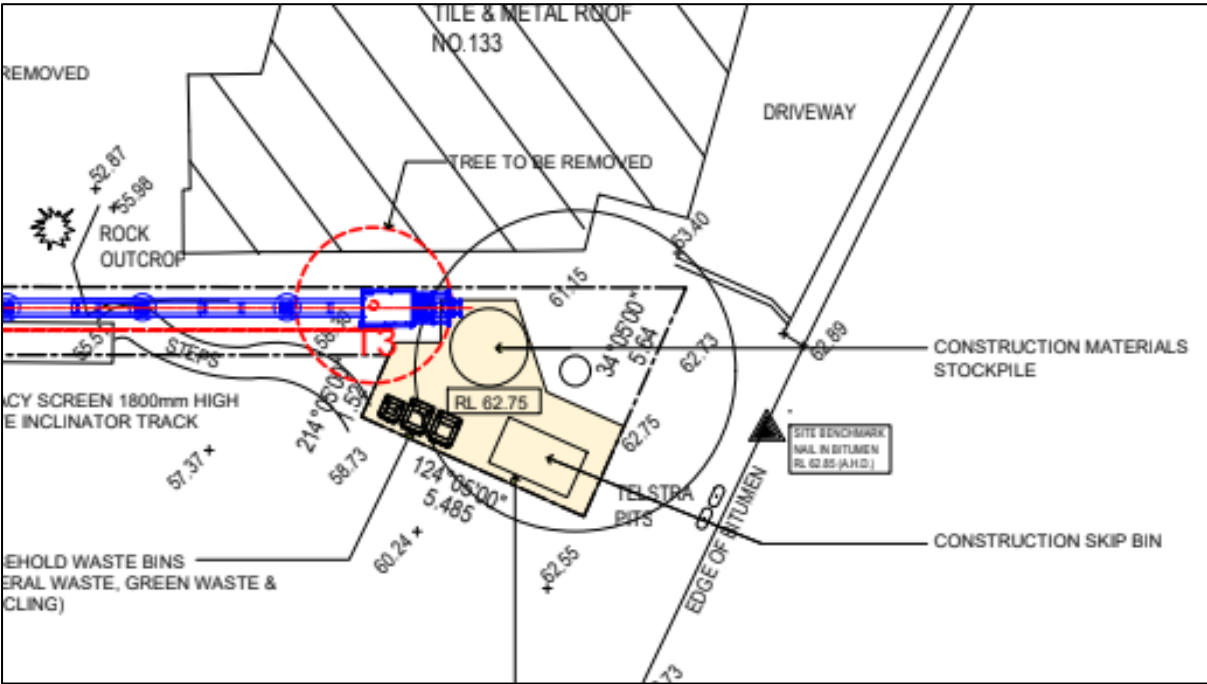


Figure 1: Height of buildings map (Manly Local Environmental Plan 2013)



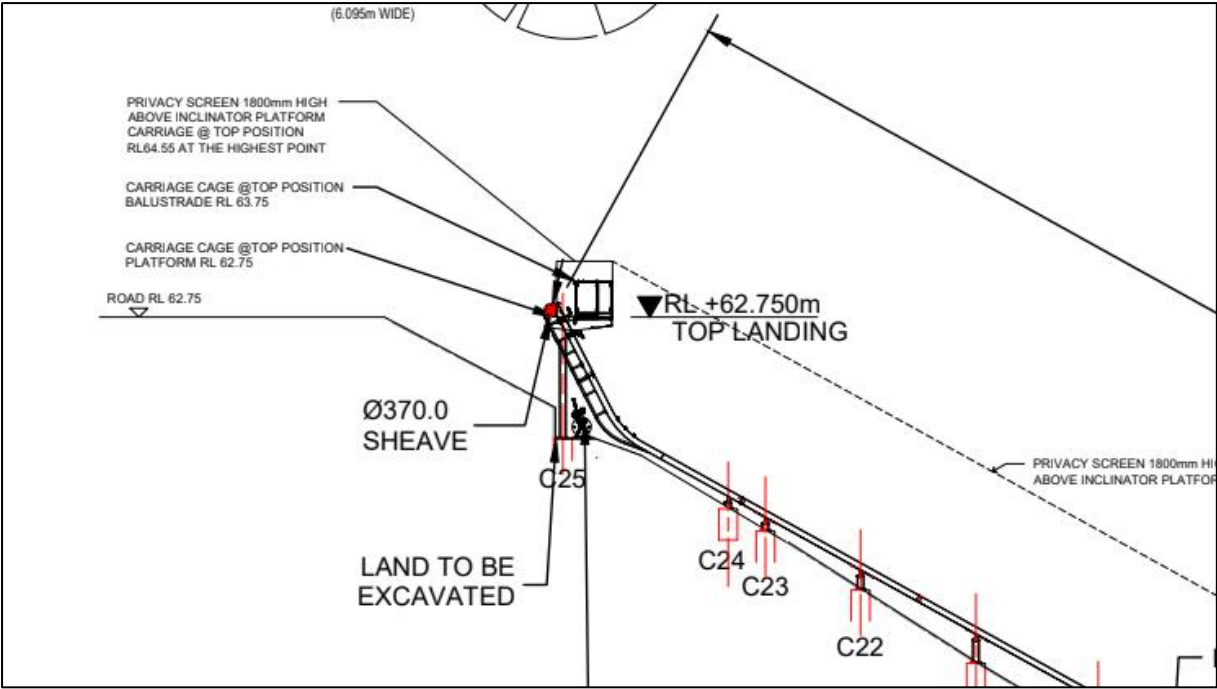


Figure 3. Inclinator reduced level as shown on the site plan (Corona Projects Pty Ltd 2024)

2.0 IS THE STANDARD A DEVELOPMENT STANDARD?

Clause 4.3A Special height provisions of the Manly Local Environmental Plan 2013 states that:

- (1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.*
- (2) Despite clause 4.3 (2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- b) the proportion or percentage of the area of a site which a building or work may occupy,*
- c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,***
- d) the cubic content or floor space of a building,*
- e) the intensity or density of the use of any land, building or work,*
- f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- h) the volume, nature and type of traffic generated by the development,*
- i) road patterns,*
- j) drainage,*
- k) the carrying out of earthworks,*
- l) the effects of development on patterns of wind, sunlight, daylight or shadows,*

- m) the provision of services, facilities and amenities demanded by development,*
- n) the emission of pollution and means for its prevention or control or mitigation, and*
- o) such other matters as may be prescribed.”*

The special height provisions control falls under subsection c); therefore, the control is a development standard and Clause 4.6 of the MLEP 2013 is applicable.

3.0 CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4.0 THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

- 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 judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

Paragraph 13 -15 of the judgement states: -

The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard

The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.

The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Accordingly, the matters required to be demonstrated by cl 4.6(3) are set out below using the relevant principles established by the Court.

Clause 4.6 (3) (a) - Compliance with the development standard is unreasonable or unnecessary in this particular case.

In *Wehbe V Pittwater* [2007] NSW LEC 827 (Wehbe) a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in Wehbe are (emphasis added):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;**
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the land is 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. That is, the particular parcel of land should not have been included in the particular zone.*

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary. This variation is based on the first test, which is addressed below.

Consistency with the objectives of the standard:

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard. The objectives of Clause 4.4 are articulated at Clause 4.3A(1): -

(1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Objective (a) The proposed development will not obscure views to Sydney Harbour from street level noting the scale and negligible bulk of the inclinator cage.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that the first test of Wehbe is achieved and thus strict compliance with the development standard is unreasonable or unnecessary in this particular case.

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

Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and can be site specific as set out in the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Paragraph 23 -24 of the judgement states: -

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The term ‘environmental planning grounds’ is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:

- Views

Views to Sydney Harbour are maintained, the works do not obstruct sightlines to or from the Harbour or the public domain. The inclinor and privacy screening will not obstruct views from developments on the high side of Seaforth Crescent, as they are situated significantly higher than the subject site.

- Orderly and economic development of land

Given the suitability of the site and the lack of impact arising from the development, the proposal is consistent with object (c) of the EP& Act 1979 to promote the orderly and economic development of land.

As set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118'*, the aforementioned environmental planning grounds do not rely on the benefits of the development as a whole, but rather they directly relate to the proposed Floor Space Ratio aspect that contravenes the development standard.

For the reasons detailed in this request, I am of the opinion that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

5.0 CONCLUSION

The purpose of the application is to apply for the alterations and additions to an existing dwelling house at 131A Seaforth Crescent Seaforth. The nature of the proposal necessitates a variation to the special height provisions development standard; however, the proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the special height provisions development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that Council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

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