

## **Clause 4.6**

### **Request to Vary a Development Standard.**

#### **Northern Beaches Council – Manly Local Environmental Plan 2013**

**Applicant's Name:** Mr. and Mrs J Rudduck

**Site Address:** 26 Lewis Street, Balgowlah Heights

25<sup>th</sup> July 2025

**1) Describe the site.**

The site is located at 26 Lewis Street, Balgowlah Heights. (Lot 13 in DP 15193). The site slopes down away from the street and contains an existing sole occupancy residence which is spread over 3 levels. The original building was constructed circa 1940s but was altered following Development Consent issued in 2017.

**2) Describe the Proposed Development**

This proposal involves obtaining approval for “habitable use” of the eastern side of the existing basement area. There are no building works as such proposed as the area (formerly a garage and Studio that has been used as storage space) is existing.

**3) What is the name of the Environmental Planning Instrument that applies to the land?**

Manly LEP 2013

**4) What is the zoning of the land?**

R2 Low Density Residential

**5) Identify the Development Standard and the Objectives of the standard to which this Clause 4.6 Variation applies?**

Clause 4.4 Floor Space Ratio and the objectives of this clause are as follows

- (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 Zone E1 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.*

Clause 4.6 Objection to a Development Standard– 26 Lewis St, Balgowlah Heights

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(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](#).

(2A) Despite subclause (2), the floor space ratio for a building on land identified as “Gross Floor Area for Certain Commercial Premises” on the [Key Sites Map](#) may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

**6) Identify the type of development standard**

The development standard is a numerical standard.

**7) What is the numeric value of the development standard in the environmental planning instrument?**

The LEP identifies the site as being on Floor Space Ratio Map Sheet FSR\_004 with an allowable FSR of 0.45:1.

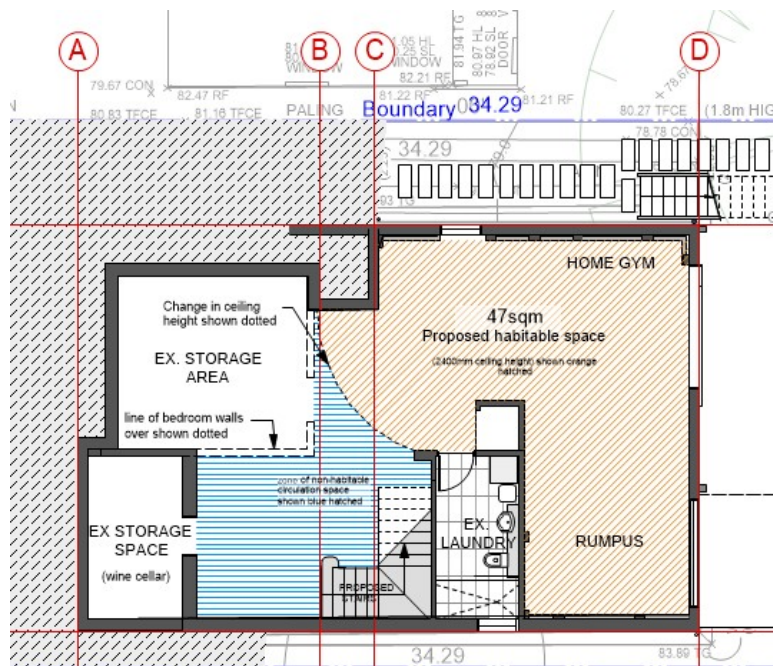
**8) How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?**

The proposal seeks to redefine an existing garage and storage area (47sqm) as habitable space for use as Home Gym and Rumpus space. This results in an increase in Gross Floor Area to 224.4sqm which results in a FSR of 0.537:1.

This is a 19% variation to the allowable FSR.

**9) Visual representation of the proposed variation**

The area proposed to be converted from storage to habitable space is shown hatched below.



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**10) How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

The proposal seeks to redefine existing basement storage areas as habitable space but does not increase the building footprint in any way. When the property was originally purchased by the owner, the south east corner of the basement was being used as a home office, and although configured as a garage, the north east corner of the basement was used as a workshop and storage area.

The proposed use of this space as a home gym and rumpus room for the owners' young children is consistent with the original use and the existing building meets the applicable objectives of the LEP as below:

- a) *Bulk and scale* – there are no proposed changes to the existing building therefore no increase in the bulk or scale. This objective is met.
- b) *Building density* - there are no proposed changes to the existing building therefore no increase in the bulk or density and no obstruction to landscape or townscape features. This objective is met.
- c) *Appropriate visual relationship to exiting character and streetscape.* – the proposal relates only to existing space within a basement that is not visible from the street and has no impact on the streetscape. This objective is met.
- d) *Minimise adverse environmental impacts* – the proposal is to permit habitable use of existing space. There is no building work involved and there will be no environmental impact. This objective is met.

Precluding this existing space from being considered habitable due to an FSR non-compliance would be unreasonable in this particular instance.

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

There are existing recent precedents for non compliance with FSR controls including 8B Beatty St., Balgowlah Heights which exceeds the permissible FSR by 20% (and the height limit by 54%). Similar to the subject site, this approval included usage of space within an existing building footprint including space within a basement area. The site is within 2km of the subject site. The development at No 69 Ernest St, Balgowlah Heights includes an FSR noncompliance of 20%. This site is within 130m of the subject site.

**12) Is there any other relevant information relating to justifying a variation of the development standard.**

The original Development Consent included approval of internal access to, and use of, the East part of the existing Basement Area. This was subsequently amended in a Section 4.55 amendment however due to a misunderstanding the property owner has carried out some works to the Basement area without approval. Council advised that this works should be subject to a Building Information Certificate which was lodged in Feb 2025. Council have subsequently advised that Development Consent for use of the Basement is required as a prerequisite for assessment of the BIC.

Preparation of a Development Application for use has identifying the non-compliance with FSR and the therefore this Clause 4.6 requirement.

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