



MANLY LEP 2013

Clause 4.6 Exceptions to Development Standards – Building Height (Amended)

Demolition of Existing Dwelling and Construction of a New Dwelling with New Swimming Pools and Landscaping at

No. 32 Bower Street Manly

Prepared for:

No 32 Bower Street Property

c/- I've Got Time Group

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Neutral Bay NSW 2089

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JOB NO. 18230

November 2019

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**MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: No. 32 Bower St Property

SITE ADDRESS: No. 32 Bower Street, Manly

PROPOSAL: Demolition of existing dwelling and construction of a new dwelling with new swimming pools and landscaping

1. (i) Name of the applicable planning instrument which specifies the development standard:

Manly Local Environmental Plan (LEP) 2013

(ii) The land is zoned:

E3 Environmental Management Zone

(iii) The number of the relevant clause therein:

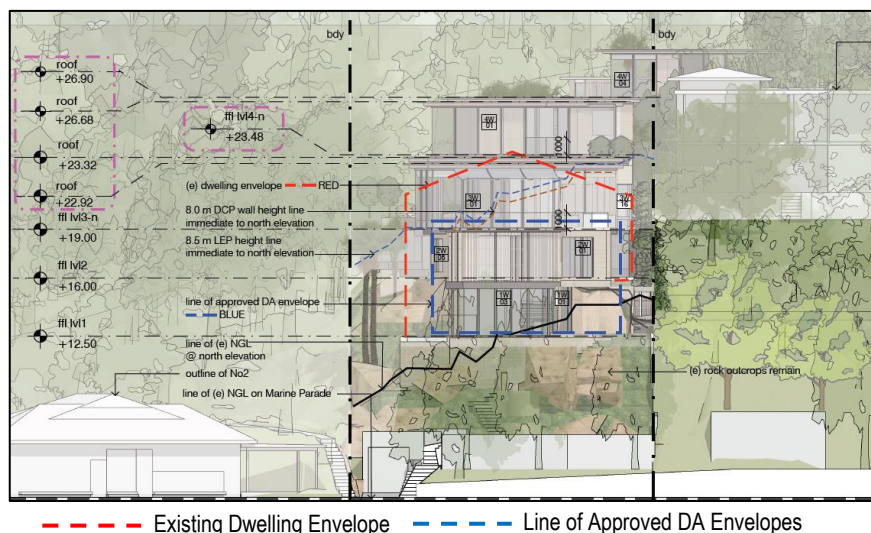
Clause 4.3 – Height of Buildings

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum building height of 8.5m applies to the subject site.

The proposal generally complies with the building height control, with the exception of small portions of the roof and upper levels at the middle and rear pavilions of the dwelling, with the non-compliant area the on east where the land slopes down. Figure 1 illustrates this significant cross-fall from west to east within the site.

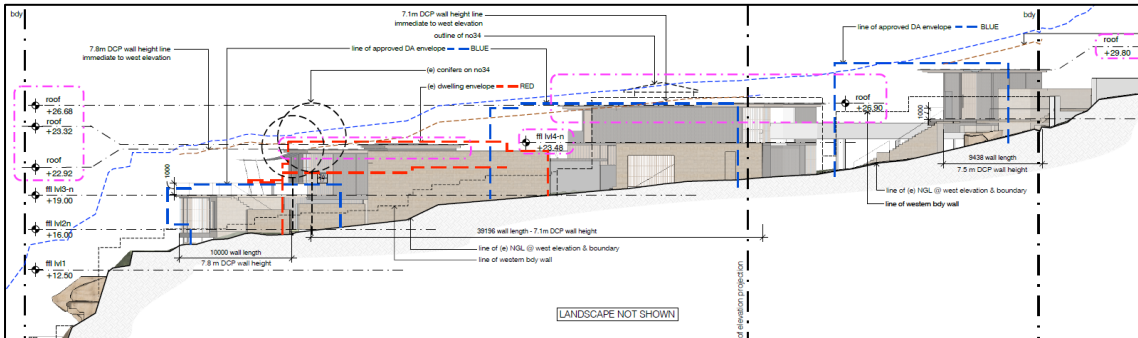


--- Existing Dwelling Envelope --- Line of Approved DA Envelopes

Source: Campbell Architecture

Figure 1: North Elevation Showing Cross-fall

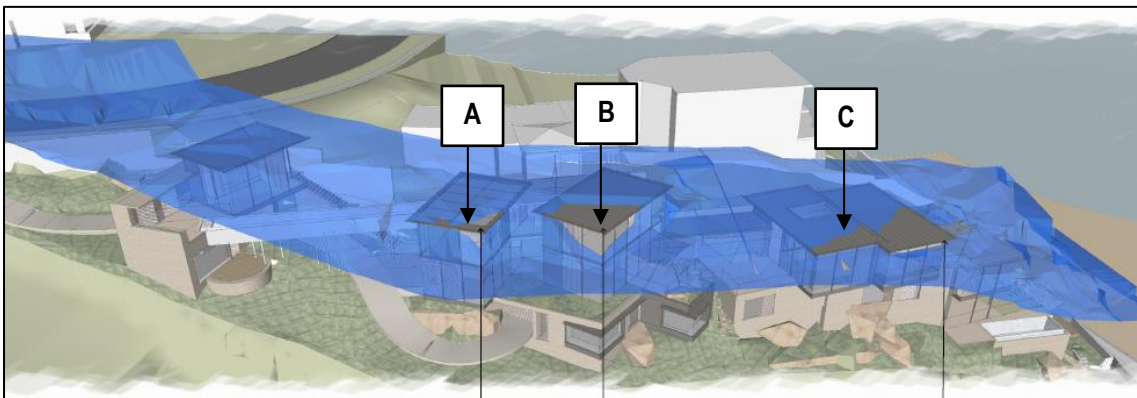
Figure 2 shows the amended proposal is fully compliant with the height limits on the western side, adjacent to No. 34 Bower Street



Source: Campbell Architecture

Figure 2: Amended Western Elevation

The variation is most clearly shown in Figure 3, which illustrates the areas of the dwelling which are greater than the height limit. These vary from 0.78m (A); 2.39m (B); and 0.96m (C) across the site (9.18% - 28.11%) (see Figure 3).



Source: Campbell Architecture

Figure 3: Height Blanket Diagram, as viewed from the East

No area of additional height is readily visible from the street, and the proposed dwelling is consistent with both existing and approved height non-compliances. The proposal is predominantly within the existing approved building envelope (see Figure 4 on the following page). The proposal also has building heights which are comparable with the consent for three dwellings and subdivision (DA 142/2016) approved on **16 March 2017** (see Figure 4 on the following page).

The proposal seeks flexibility in the application of the building height development standard to the development in the circumstance of this particular case. The proposal's height, bulk and scale has been carefully considered and designed to maintain the streetscape and reserve amenity and respect the scenic significance of the foreshore and ocean to the rear. The proposal contributes to the existing and emerging character of the locality and minimises issues regarding view impacts, privacy and overshadowing.

The assessment relates to portions of the building at the middle and rear sections of the proposed dwelling. The technical non-compliances are attributed to the challenging topography of the site and a significant fall in the existing ground line both from the front of the site to the rear, and across site. The proposal complies with the major built form controls including FSR and minimum lot size. On this basis, the height is considered to be consistent with the objectives of Clause 4.6.

Flexibility in this circumstance will provide a better outcome for and from development. This includes the additional height on the eastern side having no effect on the amenity of Bower Street residents to the east. The additional height also minimises level changes within the building, which is stepped down the site to replicate the existing landform. To refuse this application would unnecessarily complicate the design of the built form whilst reducing the floor-to-ceiling heights at the rear section of the dwelling.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause is stated, inter alia:

- (3) *Development 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.*

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130 ('Rebel'), Preston CJ states at [51]:

... in order for a consent authority to be satisfied that an applicant's request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

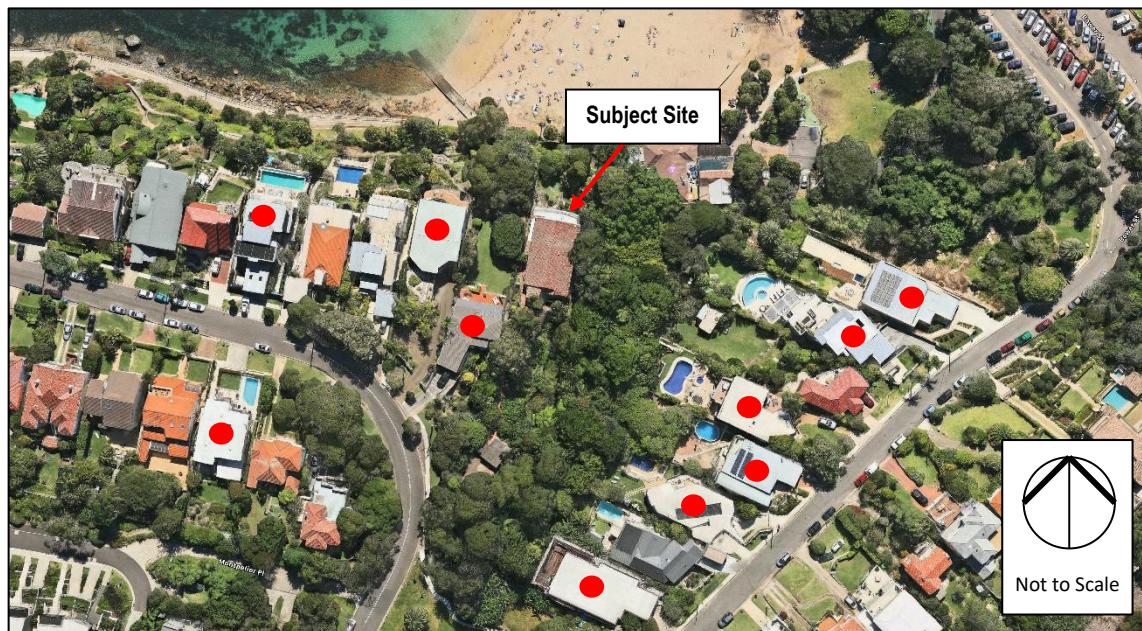
It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

It is noted that under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the non-compliance, the proposal is consistent with the desired density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Consistency with the objectives of the height standard will now be discussed.

Objective (a): to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality

The proposed dwelling's building height is generally compliant with the LEP development standard, with the exception of three portions of the dwelling's roof and small areas of the upper levels. The proposal responds to the sloping site topography, presenting a multi-level stepped design that utilises its cross fall. Dwellings on the northern side of Bower Street generally comprise flat roofs to maintain views for dwellings on the southern side (see figure 5). Accordingly, the proposed flat roof form is consistent with the surrounding dwelling.



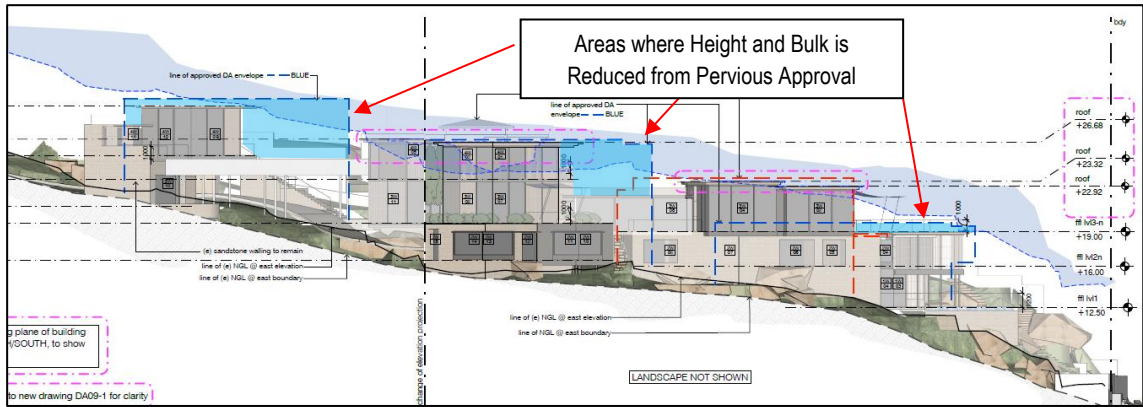
Source: Apple Maps

● Surrounding Dwellings with Flat Roofs

Figure 5: Areal View Shower Flat Roofs of Surrounding Dwellings

Objective (b): to control the bulk and scale of buildings

By breaking up the form into a series of linked pavilions, bulk and scale are minimised when viewed from the street. Accordingly, although portions of proposal are greater than the height control, neighbour and local amenity will be maintained as the proposal is well-designed and sited. Additionally, the proposal provides a substantial reduction in height, bulk and scale when compared to the previous approval (see Figure 6).



Source: Campbell Architecture

Figure 6: Eastern Elevation Showing Previously Approved and Proposals Height

Objective (c): to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
- (iii) views between public spaces (including the harbour and foreshores)

The proposal and areas of its additional height have been designed to maximise potential views across the site from habitable rooms of neighbouring and nearby properties. To maximise views from No. 34 Bower Street, the areas of additional height have been carefully positioned across the site; are stepped in height; and incorporate a flat roof form. This provides reduced view impacts compared to the previously approved heights and maintains ocean views currently enjoyed by No. 34 Bower Street (see Figure 7)



View from No. 34 Bower Street – Approved Dwelling No. 2

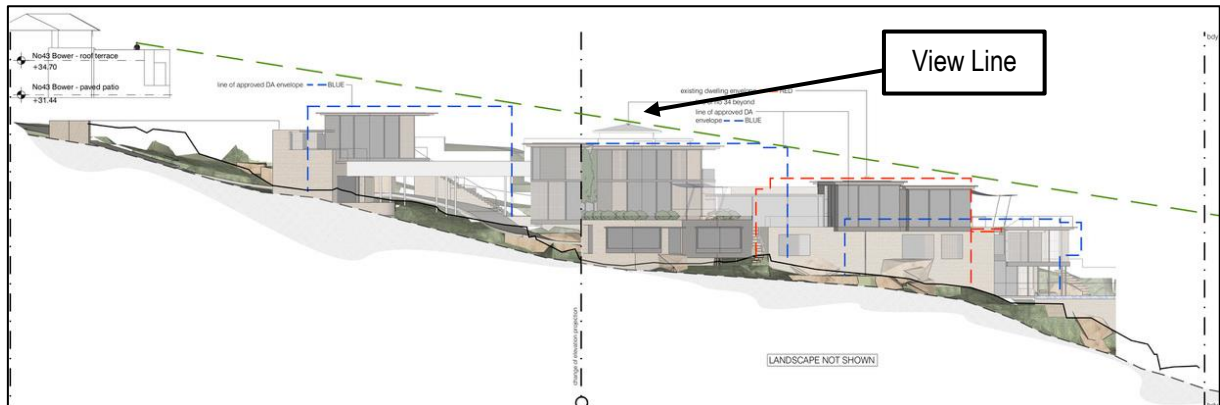


View from No. 34 Bower Street – Amended New Dwelling

Source: Campbell Architecture

Figure 7: Approved and Amended Proposal, as viewed from No. 34 Bower Street

Views exist across the subject site from the roof terrace of No. 43 Bower Street towards the ocean. Potential impacts of the proposed dwelling have been similarly minimised through the siting of the additional height; incorporation of flat roofs; and the stepped nature of the design to respond to the sloping site (see Figure 8).



Source: Campbell Architecture

View-line from the Roof Terrace of No. 43 Bower Street Over Proposed New Dwelling
Figure 8: Proposed View Impact Diagram – No. 43 Bower Street

There are currently limited public views across the site from street level due to the dense vegetation, however a small area of ocean views enjoyed from the street will be maintained despite the additional height due to viewing angles.

Objective (d): to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

The proposal provides generous sunlight access to neighbouring private open spaces and habitable rooms at No. 34 Bower Street and maintains existing levels of solar access to public spaces. Shadow diagrams have been prepared for 9:00am, 12:00pm and 3:00pm on 21 June (separately submitted).

The shadow diagrams demonstrate that as the areas of non-compliance are on the western side of the site, they will not result in additional shadow over No. 34 Bower Street, with minor reductions likely.

On the eastern side, shadows are already cast over the public domain, specifically the leafy Reserve to the east. Accordingly, the areas of non-compliance will not cast any additional shadow to the east on neighbouring sites or the public domain.

Objective (e): to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The existing vegetation and topography of the site and its surrounds has been taken into consideration in the proposal, which retains trees where possible and provides generous soft landscaped areas whilst preserving prominent features and setting the pavilions into the topography of the site.

In our opinion, the proposal meets the objectives of the LEP Clause 4.3 Height of Buildings by ensuring consistency with the landscape and streetscape; controlling the building's bulk and scale; maintaining views and solar access; ensuring appropriate vegetation is provided, including additional canopy trees; and the topography of the site is maintained.

The landscape proposal has been revised to provide a substantial tree canopy and offers screening

from the neighbouring reserve (see Figure 9). The concept of pavilions among the trees will filter views of the dwelling from the adjacent reserve.



Source: Campbell Architecture

Figure 9: Proposed Landscape View

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The development standard's underlying purpose is to minimise the impacts of building heights on the topographic landscape, streetscape locality, bulk and scale, views, overshadowing, and bushland and surrounding land uses. This report demonstrates that despite the additional height, the proposal will maintain these objectives; being designed in consideration of the character of the locality and potential impacts on nearby properties.

Strict compliance with the development standard would further complicate the already articulated and stepped built form design. The way the pavilions have been designed, is to combine compatible uses in a logical manner, and limit changes of levels within those compatible uses. The small areas of additional building height ensure that level floor areas are provided throughout the dwelling. The reductions in height and increases in setback have reduced any effects from the additional height, and retained the concept of the various pavilions.

The contemporary dwelling complements the existing and future character and scenic amenity of the area. We understand views from adjacent and opposite neighbours will be maintained and only minimal additional overshadowing of the already shady reserve will occur. The height of the pavilion-style designed proposal also allows the building to blend with the dominant tree canopy of the reserve.

Accordingly, in our opinion, the requirement to comply with the maximum Height of Building control for the new dwelling is unreasonable as the area of additional height is not readily discernible from the street; the built form will improve the scenic amenity of the harbour and foreshore; resident amenity will be preserved for the future occupants; and the proposal's form will maintain amenity to neighbouring properties.

Test 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;

While the standard has not been virtually abandoned or destroyed, it is important to note that Council have, on previous occasions, consented to proposals in the locality with a Building Height that exceeded the development standard, as evidenced in the Development Variation Registers published on Council's website. Recent examples of these in Manly are outlined in Table 1:

ADDRESS	DA NUMBER	LEP CONTROL	BUILDING HEIGHT APPROVED	ADDITIONAL HEIGHT
14 Bower Street, Manly	0079/2017	8.5m	9.35m	10%
82-84 Bower Street, Manly	0168/2017	8.5m	11.2m	31.8%
7-9 Marine Parade, Manly	0224/2017	8.5m	9.6m	12.9%
9 Addison Road, Manly	0270/2017	8.5m	8.9m	0.5%
61 Bower Street, Manly	0243/2017	8.5m	9.9m	16.5%
57 Addison Road, Manly	0540/2018	8.5m	10.8m	27%
32 Bower Street, Manly	0142/2016	8.5m	11m	29.4%

There are numerous examples of developments in the Northern Beaches LGA and in this immediate area which have been approved with non-compliances of the maximum Height of Building development standard. This also includes the previous DA approved for the subject site. While each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum building height standard in the past.

4.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

Environmental planning grounds is deliberately broad and could include contextual fit, social benefits and the absence of environmental impacts. This section must consider grounds that relate to the subject matter, and the objects of the EPA Act (Section 1.3): in particular (c) to promote the orderly and economic development of the land and (g) to promote good design and amenity of the built environment. Also consider whether the proposal achieves the objectives of the precinct (Woollahra). For interest sake *Four2Five v Ashfield Council* [2015] NSWLEC 90 discussed the matter at [26] as follows:

These phrases are of wide generality enabling a variety of circumstances or grounds to justify contravention of the particular development standard. The "sufficient ... grounds" must be "environmental planning grounds" by their nature. The word "environment" is defined in the EPA Act to mean "includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings".

The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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 *FourFive Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

This report demonstrates the proposed new dwelling will be compatible with nearby and future development. The areas of contravention are unlikely to be visible from Bower Street or discernible as additional height from the reserve. The roof form is compatible with dwellings on the northern side of Bower Street and the additional height will not interfere with the tree canopy. Therefore, the height will not affect streetscape amenity or existing characteristics of the precinct in this sense. The location of additional height is the result of the internal layout and design of the proposed dwelling; maintaining appropriate floor-to-ceiling heights; providing level floors; and the dwelling being stepped down the site due to the challenging topography in two directions.

In addition, it is in our opinion that the additional height is unlikely to result in adverse amenity impacts in terms of overshadowing, privacy or view loss. Overshadowing and loss of privacy is minimised by presenting a compliant building height on the western side to No. 34 Bower Street. Indeed, the combination of the proposed flat roof, segmented layout and stepped down design will maintain views over the site from No. 43 Bower Street and improve ocean views from No. 34 Bower Street. As the areas of non-compliance are confined to the eastern side of the proposal, they will not result in additional overshadowing when compared to the existing situation. Similarly, as the eastern boundary adjoins a reserve, privacy of properties of the east are maintained. Therefore, we consider the elements contributing to the proposal's additional height as being appropriate in this circumstance.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. This is particularly the case when the proposal is otherwise compliant with building height, FSR, lot size and landscaping. It is noted that the proposal is a contemporary and intricately designed response to the unique and sensitive location by a renowned architectural firm. As outlined in our SEE (separately submitted), the location has a number of constraints which have been met in this dwelling's thoughtful design.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning ground to justify the variation to the development standard, as required in Clause 4.6(3)(b).

5. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the Consent Authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed 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*

The question of a request 'adequately' addressing the matters is explained in *Baron Corporation Pty Ltd v Council of the City of Sydney* [2019] NSWLEC 61 where Preston CJ states at [77]:

The requirement that the matters in cl 4.6(3) be demonstrated by the written request refers to an outcome, not a process. Although the written request “seeks” to justify the contravention of the development standard, it must do this by “demonstrating” the matters in paragraphs (a) and (b) of cl 4.6(3). These matters are outcomes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are environmental planning grounds to justify contravening the development standard.

The applicant submits that the Consent Authority can and should be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion the proposal achieves the objectives of the Development Standard, as already demonstrated; and the objectives for development within the E3 Environmental Management Zone, as discussed in Section 4.1.1 of the SEE. From this, we consider the proposal is in the public interest and should be supported. A detailed assessment of the proposal against the relevant zone objectives is undertaken below, inter alia:

Objective: *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Response: The positioning of additional height minimises any likely effect on the ecological, scientific or cultural values of the locality; and enhances the aesthetic value of the site.

Objective: *To provide for a limited range of development that does not have an adverse effect on those values.*

Response: The proposed new dwelling and landscaping works is a typical form of development in the locality and the additional height will maintain the area’s ecological and aesthetic values.

Objective: *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Response: The proposed additional height will not impact on the appearance of nearby environments or dominate the natural scenic qualities of the foreshore. Significant trees will be retained where possible or replaced with new trees and plantings.

Objective: *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Response: The additional height will not impact on the nearby foreshore and is a result of maintaining the topography of the site by minimising cut and fill.

Objective: *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutant in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Response: Stormwater runoff will be managed in accordance with the Stormwater Management Plan, prepared by Campbell Architecture; is not impacted by the additional height; and will not affect the ecological characteristics of the locality.

Objective: *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Response: Areas of additional height are a result of the built form and site’s challenging topography, with pavilions located to maintain existing substantial trees and site features. The limited locations will not detract from the amenity of surrounding development and respond to the site’s challenging topography.

For the reasons contained in this application, there are sufficient environmental planning grounds to justify varying the development standard as the proposal is consistent with the development standard objectives, the zone objectives, and the intent of Clause 4.6. From this, we consider the proposal is in the public interest and should be supported.

6. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and the Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly impacting neighbouring properties.

The additional height will enhance the amenity and functionality of the proposed dwelling without significantly impacting neighbouring properties. Careful consideration has been taken in the design of the proposed dwelling, which ensures appropriate setbacks and FSR provide an appropriate bulk and scale with nearby development, whilst maintaining solar access and privacy to adjoining properties.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the area and zone and is, in our opinion, in the public interest.

The proposal satisfies the objectives of the E3 Environmental Management Zone and Clause 4.3 of the LEP; is consistent with the intent of Clause 4.6; and should be supported.

7. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Rebel* (see Table 1 on the following page).

We are of the opinion that the Consent Authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the E3 Environmental Management Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Rebel)	Para	Para	Para	Para
19	Is it a development standard (s.1.4)	1	Yes	YES
18	What is the development standard	1	Height of Buildings	YES
18	What is the control	1 & 2	8.5m	YES
22 - 24	First Precondition to Enlivening the Power – The permissive power to grant consent is subject to the consent authority considering a written request in cl 4.6(3)(a) and (b); and being satisfied of both matters in cl 4.6(4)(a)(i) and (ii). Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
21, 22	1st Positive Opinion – 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 Clause 4.6(3). There are two aspects of that requirement.	4	The Cl4.6 variation has adequately addressed both matters in Cl4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
22	First Aspect is Clause 4.6(3)(a): <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</i> Common ways are as set out in <i>Wehbe</i> .	4.1	The proposal is consistent with Tests 1, 3, and 4 of <i>Wehbe</i> : <ul style="list-style-type: none"> • The objectives of the standard are achieved notwithstanding the non-compliance with the standard; • The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; and • 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. 	YES
23-24, 50, 51	Second Aspect is Clause 4.6(3)(b) – <i>that there are sufficient environmental planning grounds to justify contravening the development standard</i> The written request must demonstrate the two aspects to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) and (ii) that the written request has adequately addressed the matters required to be demonstrated by subcl (3). The environmental planning grounds must be “sufficient” in two respects: a) The environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus is on the aspect or element of the development that contravenes the development standard,	4.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> • The proposed height facilitates a development consistent with the planning objectives of the environmental management zone; • The proposed new dwelling will be compatible with nearby and future development, and has been carefully designed to maintain neighbours’ views, solar access and privacy; and • Strict compliance with the development standard would not result in a better outcome for development. 	YES

	<p>not on the development as a whole, and why that contravention is justified on environmental planning grounds.</p> <p>b) 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.</p>			
23	<p>2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out</p>	5	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Webbe</i> . The proposal is also consistent with the objectives of E3 Environmental Management Zone, as addressed in the SEE.	YES
	<p>Second Precondition to Enlivening the Power – that the concurrence of the Secretary has been obtained [CI4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under CI4.6.</p>	6	As the relevant matters for consideration under CI4.6 have been satisfied as outlined above, the Court can grant development consent	YES

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