

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For: Torrens Title Subdivision & Two Semi-Detached Dwellings
At: 2 Pacific Parade, Manly
Applicant: Du Plessis & Du Plessis Architects

The subject development application relates to the Torrens Title subdivision of one lot into two followed by the construction of two semi-detached dwellings upon land at No. 2 Pacific Parade, Manly (**Site**).

The proposal results in the following floor space ratio:

Lot 1: 145m² or 0.65:1
Lot 2: 145m² or 0.65:1

Therefore, the proposal seeks approval for a variation to the **Floor Space Ratio** development standard in clause 4.4 of the Manly Local Environmental Plan 2013.

4.4 Floor Space Ratio

(1) 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 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) 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 in Zone B2 Local Centre 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.

The Floor Space Ratio Map indicates that the floor space ratio that applies to the Site is 0.6:1. The proposal represents a non-compliance of 11.32m² or a 8.4% variation.

The following clause 4.6 written request has been prepared having regard to clauses 4.4 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land & Environment Court. It is submitted that the variation is well founded and is worthy of the support of the Council.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

- (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.*

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.4 of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that clause 4.4 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

On this basis it is considered that clause 4.4 is a development standard for which clause 4.6 applies.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 Manly Local Environmental Plan 2013):

(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 *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The objectives of the Floor Space Ratio standard are set out in clause 4.4(1) of Manly Local Environmental Plan 2013 and 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 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.*

Compliance with the Floor Space Ratio standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

- a. The proposed amendments, whilst providing for increased floor area, as defined, provides for increased setbacks to the side boundary from the upper level. The upper level is well articulated, particularly on the side elevations, and the proposed amendments reduced bulk and scale.
- b. The proposal provides for a bulk and scale that is compatible to the site area and does not obscure important landscape or townscape features. The proposal does not require the removal of any significant vegetation and retains the existing heritage tree in Council's road reserve. The site is relatively level and there are no significant features.
- c. The proposal provides for a development that provides an appropriate visual relationship with the existing character and landscape of the area. The proposal provides for external finishes, comprising weatherboard cladding and a metal pitched roof, which are compatible with the character of the existing locality. The dwelling is designed with good articulation with varied setbacks

- and of a form that is complementary to the locality. The proposal is enhanced by the proposed landscaping and improved the landscaped character.
- d. The proposal and in particular the non-compliance with the Floor Space Ratio control, does not have any adverse impacts on the enjoyment of the adjoining land. The proposal maintains appropriate solar access, amenity and privacy to the adjoining properties as discussed in detail in the Statement of Environmental Effects. The proposal does have adverse impacts on the use or enjoyment of the public domain. The proposal provides for an appropriate presentation to the street frontage.
 - e. This objective does not apply.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “promote the orderly and economic use of the land” and “good design and amenity of the built environment”. In this regard the proposed attached dwellings are compatible with the predominant form of development in this locality. The majority of properties including No. 4 – 20 Pacific Parade (inclusive) provide for semi detached dwellings, with the majority of allotments similar in size to that proposed and supporting semi-detached housing.

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Floor Space Ratio standard, which include:

- The proposal provides for additional housing to meet the needs of the locality.
- The proposal is compatible with the existing surrounding development and the established subdivision pattern.

5. Is the proposed development 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 proposed development is consistent with the objectives of the Floor Space Ratio development standard, which is demonstrated in the analysis above.

The proposed development is also consistent with the R1 General Residential objectives in Manly Local Environmental Plan 2013.

The objectives for the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In relation to the above objectives for the R1 General Residential zone the proposal is consistent with those objectives given that:

1. The proposal provides an additional dwelling to assist in meeting the housing needs of the community.
2. The proposal provides for two semi-detached houses.
3. Objective 3 does not apply.

As the proposal is consistent with the objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice. One circumstance where the Planning Secretary's concurrence cannot be assumed is where the development contravenes a numerical standard by greater than 10% and such applications are required to be deferred to the Local Planning Panel.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

7. Conclusion

This written request justifies the proposed variation to the Floor Space Ratio development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant floor space ratio is justified for the following reasons:

- The non-compliance will not result in any adverse streetscape impacts.
- The non-compliance will not result in any impacts upon existing trees and vegetation and will not result in any tree loss.
- The non-compliance will not result in any additional overshadowing of adjoining properties.

- The non-compliance will not result in any visual or acoustic impacts upon adjoining properties.
- The non-compliance will not result in any loss of outlook for any adjoining properties.
- The development will provide for a built form which is compatible with the surrounding locality.

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November 2022