

# SHIMDESIGN

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4-03-2020

Dear Ashley

**DA 2019/1317 26 West Street, Balgowlah**

## **REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF MANLY LEP2013**

### **Clause 4.3 Building Height**

Clause 4.3 of the Manly LEP 2013 and the associated map prescribe a maximum building height of 8.5m for this site. Due to the existing development and the topography of the site, the proposed new works will have a maximum height of approximately 13m.

The proposal is considered acceptable and meets the objectives of the clause, with sufficient environmental planning grounds to justify contravening the development standard.

Compliance is impossible and unnecessary in this case, as the proposal achieves the objectives of the clause.

The objectives of Clause 4.3 are as follows;

- (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,*
- (b) to control the bulk and scale of buildings,*
- (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),*
- (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,*
- (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.*

### **Clause 4.6 Exceptions to Development Standards**

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Clause 4.6 of the Manly Local Environmental Plan 2013 allows for exceptions to Development Standards. The objectives of this Clause 4.6 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.*

The clause goes on to state:

*2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(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*

*(4) 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, and*

*(b) the concurrence of the Secretary has been obtained.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the height of building development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

**Clause 4.6(3) and 4.6(4)**

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The proposal is considered against the four matters required to be established under Clause 4.6.

## **1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with: see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245.

This objection relies on this method.

Compliance with the objectives of the height standard is addressed under Point 4 below.

Additionally,

- Compliance with the development standard is unreasonable and unnecessary as the proposal will have limited impact on the streetscape.

- Exceedance of the height control will not create additional building bulk nor result in unreasonable environmental impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for the locality or adjoining properties.

- The proposal does not seek to increase the number of storeys nor raise the ridge or floor levels or existing approved building height, but merely extend a lower pitch of roof over the existing decking to provide additional space to the living, kitchen and bedroom.

- Compliance is unreasonable given the extremely steep natural topography and limited building platform of the site. The existing side and front setbacks and location of the established dwelling restrict development, expansion or renovation to any other dimension.

## **2. There are sufficient environmental planning grounds to allow Council to be satisfied that a variation to the development standard should be supported.**

- The proposal achieves the desired outcomes of the development standard in that the proposed height and roof form is consistent with the topographic landscape and prevailing building height. The proposal preserves the environmental and solar amenity of neighbouring properties and public views and access and is consistent with the height, bulk and scale of the desired future character of the locality with negligible impact to the streetscape or neighbouring properties.

- The development is constrained by the siting of the existing development and sloping topography of the site.

- The proposal promotes good sustainable design and enhances the amenity of the occupants and the immediate area, justifying the flexible application of the development standard.

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**3. The applicants written request has adequately addressed the matters required to be demonstrated.**

**4. 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.**

**Objective a)** *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future character in the locality.*

Comment: The existing surrounding development comprises a mix of one, two and three storey detached residential dwellings on varied sized allotments. The proposed roof extension is over the existing decking and follows the slope of the land.

**Objective b)** *To control the bulk and scale of the building.*

Comment: The existing approved wall and roof heights lie outside the 8.5m limit.

**Objective c)** *To minimize disruption to the following – views to and from nearby residential development and public spaces and views between public spaces.*

Comment: The proposed height variation does not affect any neighbouring property or views or vistas to or from a public space. The neighbours to the high side of West Street have been approached and are happy that the ridge height shall not be altered and their ocean and harbour views shall not be affected. The neighbouring dwelling to the southern side is set forward of the proposed works. (Only the garage lies adjacent)

**Objective d)** *To provide solar access to public and private spaces and maintain adequate sunlight access to private open space and habitable rooms of adjacent dwellings.*

Comment: Solar access to the unformed Lower Beach Street and public pathway shall not be affected as it lies to the Northern boundary. There is a significant landscaped buffer to the pathway.

**Objective e)** *To ensure the height and bulk of any proposed structure has regard to existing vegetation and topography and any other aspect that may conflict with bushland.*

Comment: The proposed works do not result in any variation to the existing landscaped area or impervious area. The site is within a residential setting with significant bushland and indigenous landscaping to the lower eastern half of the site.

## Conclusion

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that strict compliance with the development standard would be unreasonable and unnecessary.

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This proposal is consistent with the height standard and zone objectives and the lack of adverse impact arising demonstrates sufficient environmental planning grounds to justify contravening the standard and supporting the submission. Thus the development shall also be within the public interest.

Yours sincerely

Kerrie Shimeld  
For Mark Richards and Gaenor Meakes