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92 Addison Road, Manly

Variation to Clause 4.4 Floor
Space Ratio

Prepared for Angela Holm and Robert
Chapman

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Introduction

This Clause 4.6 variation request has been prepared by Place Design Group on behalf of Angela Holm and Robert Chapman in relation to the development application for 92 Addison Road, Manly (**the site**). This request seeks to vary the floor space ratio prescribed for the site under Clause 4.4 of the Manly Local Environment Plan 2013 (MLEP 2013).

Clause 4.4 of the MLEP 2013 specifies the following:

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.

FSR is defined by the MLEP 2013 as follows:

***floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area*

The relevant FSR Map nominates an FSR of 0.6:1 for the site. When measured in accordance with the MLEP 2013 definition, the current dwelling has an FSR of 0.73:1 and the proposal seeks consent for an FSR of 0.79:1. This equates to an additional 19 sqm of total Gross Floor Area (GFA).

Table 1 provides a numeric overview of the noncompliance.

Table 1. Development Standard			
Growth Centre SEPP Clause	LEP Development Standard	Proposed Development Non- Compliance	Percentage of Variation
Clause 4.4 Minimum Lot Size	0.6: 1	0.19:1	31.67%

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 of MLEP 2013 and the FSR Development Standard. The following sections of the report provide an assessment of the request to vary the Development Standard relating to the FSR in accordance with Clause 4.6 of SEPP. Consideration has been given to the following matters within this assessment:

- Varying Development Standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011; and
- Relevant planning principles and judgements issued by the Land and Environment Court.

Exception to Development Standards

Clause 4.6 of the MLEP 2013 includes provisions that allow for exceptions to Development Standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain Development Standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a Development Standard, Clause 4.6(3) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

Furthermore, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. The concurrence of the secretary has been assumed in this instance. The proposed non-compliance in FSR has been assessed against the objectives of the zone and Development Standard in **Section 3**.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the MLEP 2013, Clause 4.6(3) Exceptions to Development Standards in the assessment in **Section 3** and **Section 4**.

Clause 4.6 (3a) Compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe V Pittwater* [2007] NSW LEC 827 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 ways 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.

The objective of the standard are achieved notwithstanding noncompliance with the standard

Consideration (1) which requires a demonstration that the objectives of the Floor Space Ratio can be achieved notwithstanding noncompliance is relevant in this case. The compliance of the proposed development with the objectives of the FSR standard in Clause 4.4 of the MLEP 2013 is demonstrated in **Table 2** below.

Table 2: FSR Objectives		
Objective	Comment	Objective Achieved
To ensure the bulk and scale of development is consistent with the existing and desired streetscape character	The proposed works will not alter the external appearance of the building from the streetscape and will maintain a bulk and scale which is consistent with the existing and desired streetscape character.	✓
To control building density and bulk in relation to a site area to ensure that development does not obscure important	The proposed alterations to the building will not result in any intensity of use and will not result in any increase in scale or bulk.	✓

Table 2: FSR Objectives		
Objective	Comment	Objective Achieved
landscape and townscape features		
To maintain an appropriate visual relationship between new development and the existing character and landscape of the area	The proposed alterations to the existing dwelling house will not negatively impact the visual relationship between the building and the existing character of the area as it will not be visible to the streetscape.	✓
To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain	The proposed alterations to the existing dwelling will not have any external environmental impacts or affect the use of adjoining land.	✓
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	N/A	✓

Clause 4.6 (3b) Sufficient Environmental Planning Ground to justify contravening the Development Standard

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. This section demonstrates that the impacts of the variation will be consistent with the external site impacts that may be reasonably expected by a complying development about the following:

- The proposed development noncompliance with FSR will not result in a significant intensification of the use;
- The proposed alteration will not impact the dwelling's consistency with established setbacks or bulk and scale as all alterations occur within the existing building envelope;
- Despite the non-compliance in FSR the proposed development will provide a high level of amenity to surrounding properties, with no changes to overshadowing proposed;
- It will not impact on the heritage conservation of the area;
- The proposed development is in keeping with the desired future character of the area.

Clause 4.6 (4a)(ii) Public Interest

Clause 4.6(4a)(ii) requires that the consent authority consider 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.

Despite the technical departure from the relevant FSR standard the proposed development remains consistent with the objectives of Clause 4.4 of the MLEP 2013 and therefore it is demonstrated that strict compliance with the FSR standard in this instance is unreasonable and unnecessary. Further, it is considered that the proposal will remain consistent with the objectives of the R1 zone as summarised in **Table 3** below

Table 3. Objectives of R1 General Residential	
Objectives	Compliance with Objective
To provide for the housing needs of the community.	The proposed alterations will increase the amenity of the existing dwelling which provides for the housing needs of the community.
To provide for a variety of housing types and densities.	The proposed alterations will not alter the type of housing already provided on site.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable.

Clause 4.6(5) Grounds for Consideration

In deciding whether to grant concurrence, subclause 4.6(5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal has been assessed against the relative criteria below:

Would non-compliance raise any matter of significance for State or regional planning?

The proposed non-compliance with the development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would not result in any new precedent for the assessment of other development proposals.

Is there a public benefit of maintaining the development standard?

In this instance, there is not a public benefit in maintaining the development standard. The proposed increase in FSR will result in an increase in amenity for the residents of the dwelling while resulting in no negative impacts on the public domain.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered within the assessment of the Clause 4.6 Request.

Conclusion

It is requested that Council supports the proposed variation to Clause 4.4 FSR for the following reasons:

- Compliance with the Development Standard is unreasonable and unnecessary as the proposed increase in FSR will not be seen from the streetscape;
- There are sufficient environmental planning grounds to justify contravening the Development Standard;
- The proposed FSR increase will not result in an unreasonable environmental impact; and
- There is no public benefit in maintaining the strict compliance with the Development Standard.

Overall, it is considered that the proposed variation is considered appropriate and can be supported under the provisions of Clause 4.6 of MLEP 2013.