

**CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO
RESIDENTIAL ALTERATIONS AND ADDITIONS
74 BOWER STREET MANLY
MARCH 2019**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Manly Local Environmental Plan 2013. The development standard that is requested to be varied is the maximum FSR standard.

Clause 4.6 states:

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.

A clause-by-clause analysis of Clause 4.6 is included in an Appendix.

The Development Application is therefore to be supported by a written application to show that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the submitted Development Application drawings and Statement of Environmental Effects.

1.0 Zoning of the Land

Zone Environment Management in Density Sub-Zone 6

2.0 Objectives of the Zone

The objectives of zone are as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

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3.0 Development Standard to be Varied

The development standard to be varied:

Clause 4.6 of Manly Local Environmental Plan 2013, Floor Space Ratio

The maximum floor space ratio for 74 Bower Street Manly is 0.45:1.

4.0 Objectives of the Development Standard to be Varied

The objectives of the clause are as follows:

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.

5.0 Extent of Variation to the Development Standard

The extent of the variation is a minor extension of the existing non-compliance, as shown below.

| | | |
|-------------------|----------------------|-------------------------------|
| Site Area | 698.5 m ² | |
| Allowable GFA/FSR | 314.3 m ² | 0.45:1 |
| Existing | 334.4 m ² | 0.47:1 |
| Proposed GFA/FSR | 357.9 m ² | 0.50:1 (only 0.03:1 increase) |

The variation between the proposed and allowable GFA is an increase of 43.6 m², or 14%. However, the increase of the proposed GFA to the existing GFA is only 23.5 m² which is an increase of 7.5%. Therefore half the non-complying floor area is already an existing condition.

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6.0 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposed development consists of alterations and additions to an existing dwelling. The existing Master Bedroom and Bed 2 is too small for the occupant to have sufficient circulation and the cross ventilation is also not sufficient. It was therefore proposed that the rooms be extended towards the rear in almost the same roof form as existing. It is also proposed to have existing windows replaced. As a result, there is almost no visible change to the house as a result of the application and in particular no impact on streetscape.

The previous application was made at a time when the calculation of the floor area used a different definition than what is regarded as Gross Floor Area under the current LEP and the extent of variation would have been **greater** under the previous policy – which it was approved under.

Using the calculation of the previous definition, the previous alterations and additions DA was approved with a GFA calculation of 395 sq.m, which is a 0.56:1 FSR, against an allowable 0.45:1.

Under the current LEP, the existing residence is still already over the GFA by 20m² (6%). But under the new definition the existing GFA is calculated as 334.4 sq.m for the *same floor area*.

The proposed development is only extending the Master Bedroom and Bed 2 by 2m and 1m, respectively (total of 23.5m²). Combined with the current extent of non-compliance, the proposed non-compliance is 0.5:1 FSR, which is a **smaller percentage** than the previously approved non-compliance.

Further, the additional floor space has no noticeable impact on the building height, maximum wall height and maximum storey. As the addition is very minor, it adds only a discrete amount of shadowing in the morning and afternoon, whilst not causing any detrimental impacts to either neighbour, whose predominant view is directly north.

In this case, it can be argued that strict compliance with the development standard is both unreasonable and unnecessary. It is unreasonable due to the minor extent of the additional floor area as well as the fact that it is actually **less** non-compliance than originally approved.

Simultaneously, the extension is a minimal impact development that does not have an adverse effect on neighbours or the surrounding. There are no negative impacts on nearby foreshores, significant geological features and bushland. The development complies with the objectives of the applicable zone, and the objectives of the development standard as demonstrated below.

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7.0 Compliance with the Objectives Pertaining to Development Standard to be Varied

- 7.1 *To ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

The proposal development consists only an inconsequential extension to an existing building. The impact would not result in a major noticeable increase in bulk and scale, but would have a beneficial impact of the occupants who are currently residing in the compact rooms. Additionally, since the expansion generally complies with bulk and scale controls, the repercussions of view loss are minimal for neighbouring properties. An analysis of view loss has been undertaken and found to be not a major issue.

- 7.2 *To control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

The approach of the development only involves a 2m and 1m extension to the Master bedroom and Bed 2 respectively, both located on the first floor. As it is only utilising the upper level, there is no increase in building footprint, therefore not obscuring important landscape and townscape features.

- 7.3 *To maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

The exterior of the expansion will restore its existing render, keeping the overall visual of the building consistent.

- 7.4 *To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Adverse impacts to adjoining properties was analysed, particularly due to neighbours raising issues of view and privacy impact in objections. However a review of these objections concluded that they were unfounded and actually shows that the impacts to neighbours are quite limited. Consequently, it is submitted that this object is met – they the adverse environmental impacts were minimised.

- 7.5 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.

Not Applicable

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8.0 Conclusion

A variation to Clause 4.6 of Manly Local Environmental Plan 2013 is appropriate for this project as the non-conformity is minor in scale, does not add any impact to adjoining or nearby properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

As demonstrated above, strict compliance with this standard is unnecessary to this Development Application.

Approval should not therefore be withheld due to the non-compliance with the development standard.

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4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (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) 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
The above submission clearly states why the standard is unreasonable and unnecessary in the circumstances of the case,
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
The above submission clearly states that the impact of the non-compliance is non-existent and on a merit-based assessment it can be regarded as a minor amendment to an existing residence. Height, bulk, overlooking, shadows have all been addressed as having no impact. These are reasonable planning grounds for contravening the standard.
- (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
It is submitted that the Clause 4.6 variation issued on 25th March is a written request in keeping with the requirements of the Clause 4.6 wording
 - (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
The consistency with the objectives of the standard are outlined in the submission above.
 - (b) the concurrence of the Secretary has been obtained.

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- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
It is submitted that this small extension to an existing residence does not constitute any matter of State or regional significance.
 - (b) the public benefit of maintaining the development standard, and
There is no erosion of public benefit from this approval
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

N/A

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development, **N/A**
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, **N/A**
 - (c) clause 5.4, **N/A**
 - (ca) clause 6.15, **N/A**
 - (cb) a development standard on land to which clause 6.19 applies. **N/A**