

# **UPDATED CLAUSE 4.6 VARIATION REQUEST FSR**

**Development Consent for Demolition  
Works and construction of a Dwelling  
House, Secondary Dwelling and  
Swimming Pool**

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**2 Prince Edward Road, Seaforth NSW  
2092**

**Lot 28F DP 16341**

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**May 2025**

## Introduction

The following written request has been prepared in accordance with the provisions of Clause 4.6 - Exception to development standards of the *Manly Local Environmental Plan 2013* to support the Development Application (DA) for Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool at 2 Prince Edward Road, Seaforth NSW 2092, legally described as Lot 28F in DP 16341.

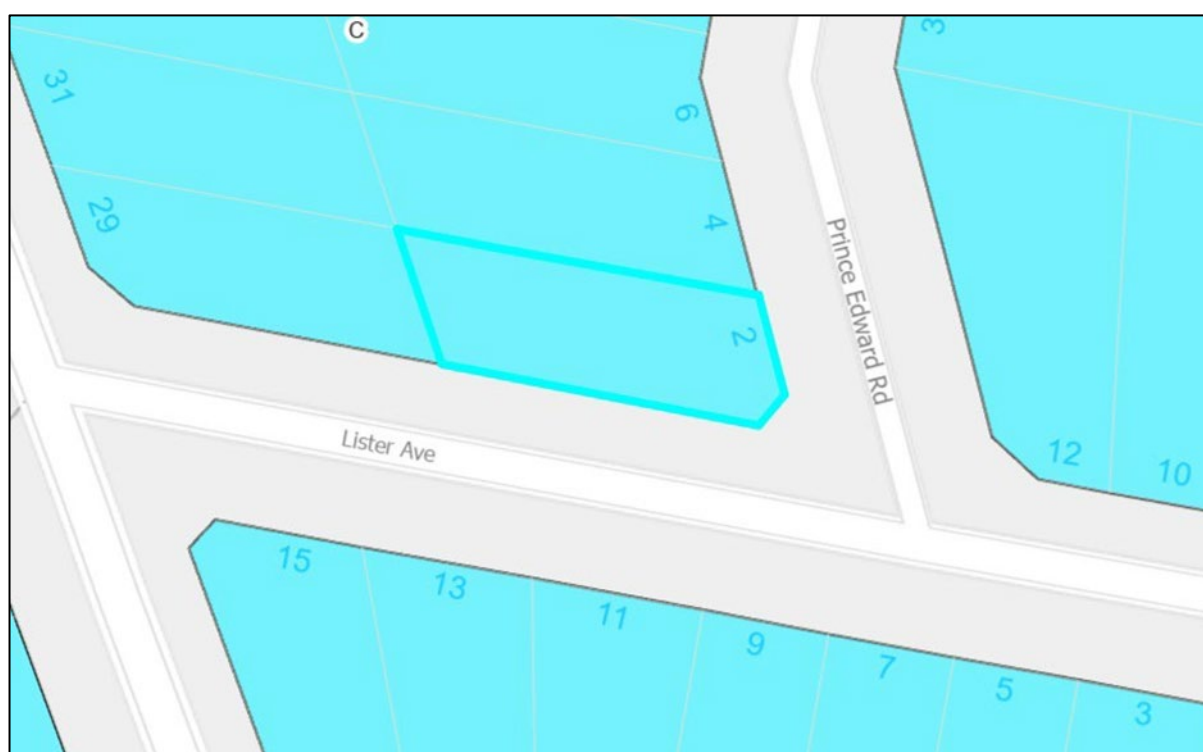
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Clause 4.6 of the Manly Local Environmental Plan 2013 enables the consent authority to grant approval for development that departs from a development standard, where justified. The clause is intended to allow a reasonable degree of flexibility in the application of certain planning controls to achieve better planning outcomes.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

## Development Standard to be Varied

The site is zoned R2 Low Density Residential under the Manly LEP 2013 and development for the purposes of a Dwelling House is permitted with consent. Pursuant to clause 4.4 in the LEP, the site has a maximum floor space ratio (FSR) control calculated at 0.45:1 per the Manly Floor Space Ratio Map.



**Figure 1: Floor Space Ratio Map**

In accordance with Section 4.1.3.1 of the Manly DCP 2013, exceptions to FSR may be considered for undersized lots. In this regard, the calculation of FSR for the subject site being within the subzone “I” on the LEP Minimum Lot Size map is based on a 500m<sup>2</sup> lot size, and consequently allows for a

maximum GFA of 225m<sup>2</sup>. The dwelling house and secondary dwelling have a combined GFA of 246.07m<sup>2</sup>.



Figure 2: Minimum Lot Size Map

The proposed development has been significantly amended in response to Council's comments, with the total Gross Floor Area (GFA) reduced to 246.07m<sup>2</sup>, resulting in a calculated Floor Space Ratio (FSR) of 0.49:1. This reflects a substantial reduction from the previously proposed 273.6m<sup>2</sup> (0.554:1 FSR) and now equates to a minor variation of 9.4% from the 0.45:1 development standard.

This Clause 4.6 Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under Manly LEP 2013. It considers the various planning controls, strategic planning objectives and existing characteristics of the site, and concludes that the proposed non-compliances achieve the objective of encouraging orderly and economic use and development of land under Section 5 of the Environmental Planning and Assessment Act 1979 ('EP&A Act').

### Justification for Contravention of the Development Standard

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

**4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

**Assessment:** Strict compliance with the 0.45:1 Floor Space Ratio (FSR) development standard is considered unreasonable and unnecessary in this instance for the following reasons:

The Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 set out five recognised ways to demonstrate that compliance with a development standard is unreasonable or unnecessary. In this case, it is considered that:

1. The objectives of the standard are achieved notwithstanding non-compliance.
2. The underlying objective or purpose of the standard is not relevant to the particular development.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required.
4. The development standard has been virtually abandoned or destroyed by Council's own actions.
5. The zoning of the land is unreasonable or inappropriate.

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The proposed development is considered to satisfy the objectives of Clause 4.4 (Floor Space Ratio) despite the minor numerical exceedance.

- The proposed FSR of 0.49:1, representing a 9.4% variation, is modest in nature and facilitates a built form that is both functional and contextually appropriate, while maintaining compliance with all other key development controls, including building height, landscaped area, and setbacks.
- The design satisfies the objectives of the R2 Low Density Residential zone, providing a high-quality dwelling form that contributes positively to the neighbourhood character, without giving rise to adverse environmental or amenity impacts.

**Overshadowing:** The proposed dwelling complies with the height limit and maintains compliant setbacks. Shadow diagrams demonstrate that adjoining private open space areas retain appropriate solar access in accordance with Council's controls.

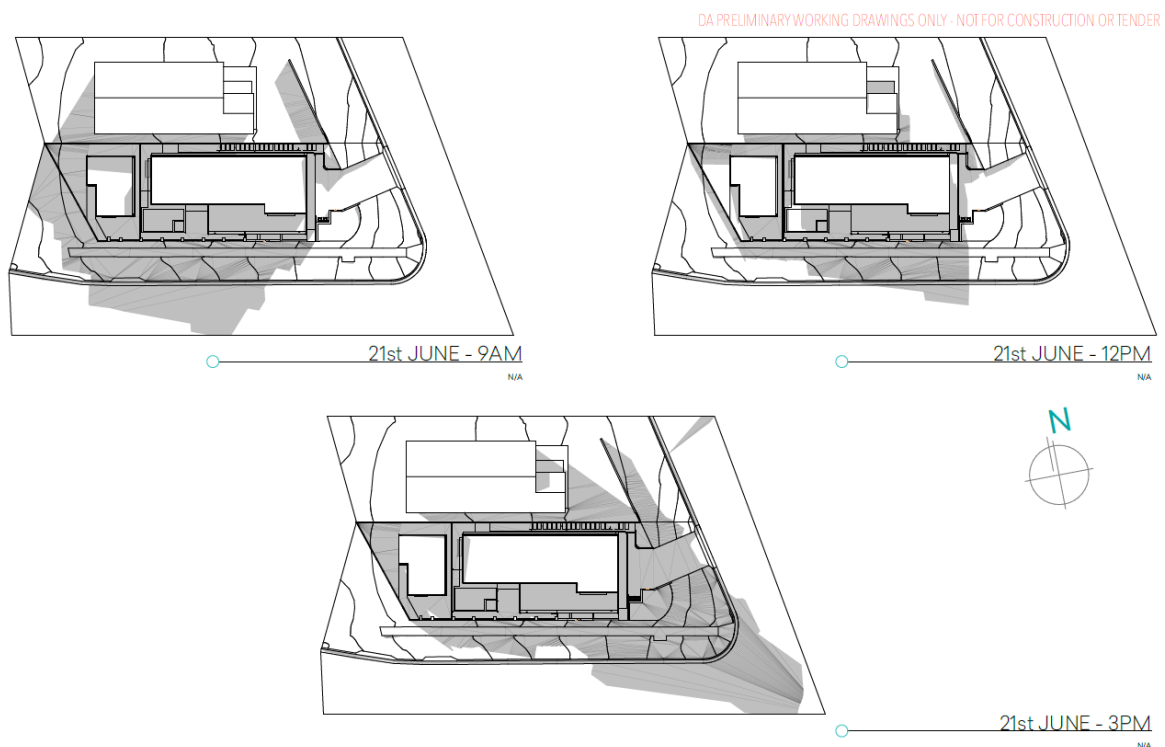


Figure 3: Shadow diagrams for 21<sup>st</sup> June 9am – 3pm.

Source: New Paradigm Design



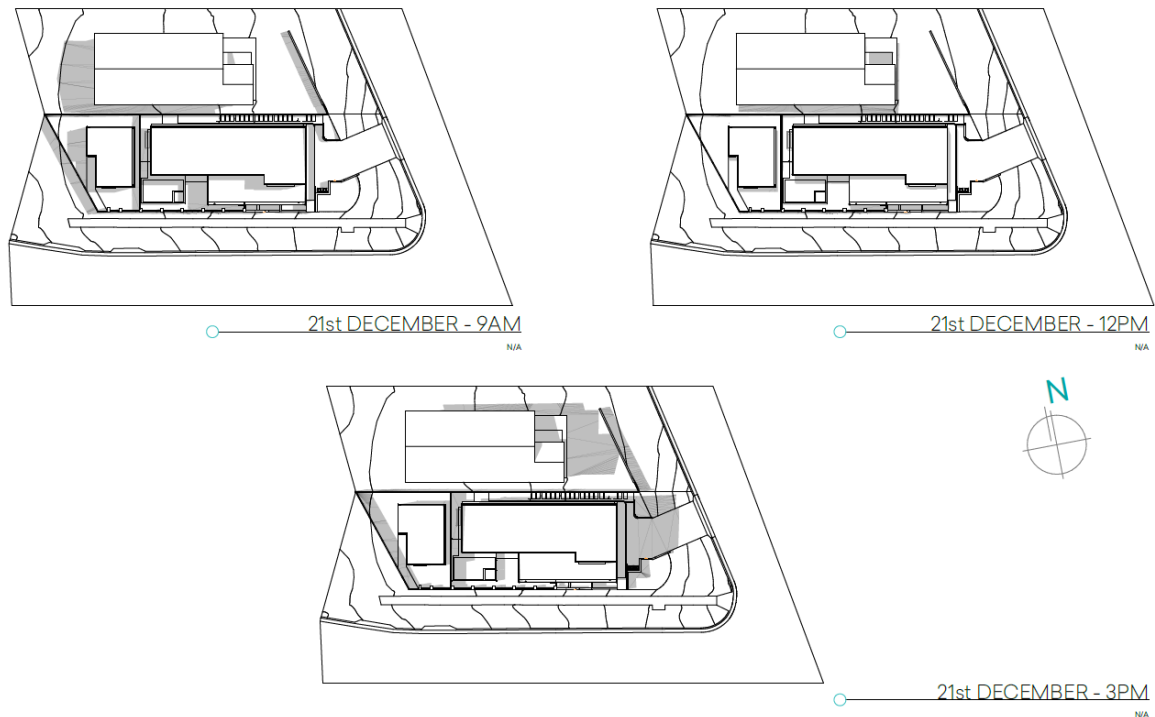


Figure 4: Shadow diagrams for 21<sup>st</sup> December 9am – 3pm.

Source: New Paradigm Design

**Visual and Acoustic Privacy:** The proposal includes considered window placements to maintain privacy to neighbouring properties. As mentioned throughout, the upper level setbacks have been increased to ensure amenity impacts are maintained. No adverse acoustic impacts are expected beyond normal residential levels.

**Visual Impact from Bulk and Scale:** The revised design has reduced the total GFA and increased the northern side setback to 2.1m at the upper level, softening the appearance of the building and improving spatial relief between dwellings. The built form is well articulated with variation in materials and recesses, further reducing any perception of visual bulk when viewed from the public domain and adjacent properties. The compliant height (7.877m) and appropriate modulation mitigate any perception of bulk. Architecturally the building addresses both street frontages and incorporates a variety of architectural features which results in high standard outcome that will enhance the character of the street and broader locality. The design utilises vertical timber battens on the garage door, feature stone on the southern and eastern elevation, formed concrete finish above the garage and a white rendered finish. Balconies and large varied-shaped windows create a sense of openness into the design. It is considered that the proposal results in a high-quality product that takes into consideration the topography of the site



**Figure 5: Eastern elevation demonstrating dwelling separation. Source: New Paradigm Design**

**View Impacts:** The increased setbacks and reduced height improve view sharing by stepping the built form away from site boundaries, allowing view corridors and sky access to be maintained from adjoining properties. The variation to FSR does not contribute to additional height or roof massing and does not obstruct significant view lines.

**Amenity:** The proposal has been refined to deliver greater open space, improved landscaping outcomes, and more generous setbacks, all of which contribute to both on-site and surrounding residential amenity. The internal layout and site planning provide a high level of amenity for future occupants while respecting neighbouring outlook, privacy, and solar access.

Consistency with the objectives of the FSR standard in the LEP R2 Low Density Residential	
Objectives	Assessment
4.4(a) to ensure that the bulk and scale of development is consistent with the existing and desired streetscape character	The proposed development maintains a built form that is consistent with both the existing and desired streetscape character. The dwelling presents as two storeys when viewed from Lister Avenue, with increased side setbacks, a compliant building height (7.877m), and well-articulated facades that reduce visual bulk. Importantly, the basement level is wholly below 1 metre above natural ground level and therefore does not contribute to the perceived scale of the building. This basement configuration allows for car parking to be accommodated in a manner consistent with other dwellings in the area, without adding to the building’s bulk from the street. The architectural detailing and material selection further support a high-quality streetscape outcome.
4.4(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	The minor 9.4% variation to the FSR does not result in excessive bulk or density. The development maintains generous landscaping (147.86m²) and open space (268.31m²), ensuring that the built form is subordinate to landscape features and allows for an open, green streetscape consistent with the low-density zoning.

<p><i>4.4(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area</i></p>	<p>The design has been refined to improve the visual relationship with neighbouring dwellings and the natural topography. The compliant basement sits below natural ground level, minimising visual impact, while the reduced GFA and increased setbacks provide appropriate separation and spatial relief. The built form responds sympathetically to the site's corner location and slope.</p>
<p><i>4.4(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain</i></p>	<p>The proposal results in no unreasonable overshadowing, loss of privacy, or view impacts to adjoining properties. The increase in FSR is numerical only and does not contribute to any additional height, massing or visual intrusion. The design has been carefully considered to respect neighbouring amenity, and the public domain is enhanced through retained vegetation and a clearly articulated, well-proportioned streetscape presence.</p>
<p><b>Consistency with the objectives of the R2 Low Density Residential</b></p>	
<p>To provide for the housing <i>needs of the community within a low density residential environment.</i> To enable other land uses that <i>provide facilities or services to meet the day to day needs of residents.</i></p>	<p>The proposed height variation does not raise any inconsistency with the R2 Low-Density Residential zone objectives. The development provides for new residential accommodation in the form of a well-designed primary dwelling and a secondary dwelling, contributing to housing diversity within the local area. The proposed built form remains consistent with the established low-density character and complies with key planning controls including height, landscaped area, and open space. The scale and intensity of the development are appropriate for the site and its context. The dwelling design ensures a high level of amenity for future occupants and reinforces the residential character of the area without generating land use conflicts.</p>

Accordingly, it is submitted that compliance with the development standard is unreasonable and unnecessary, as the proposal achieves the outcomes sought by the standard through other means, and the minor departure results in a better overall planning and urban design response for the site.

***4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.***

There are sufficient environmental planning grounds to justify the minor variation to the Floor Space Ratio (FSR) development standard for the following reasons:

- The minor exceedance of 9.4% (21.07m<sup>2</sup>) is largely attributed to the inclusion of a secondary dwelling, which provides a modest, self-contained living space (45.46m<sup>2</sup> GFA) that contributes to housing diversity and supports the objectives of the R2 Low Density Residential zone. The overall bulk and scale remain consistent with low-density character.
- The development includes a basement level that has been designed to comply with the LEP definition of a basement, with no part of the floor more than 1 metre above natural ground level. As such, the basement is excluded from the Gross Floor Area and does not contribute to the proposed FSR, despite containing functional non-habitable space including parking, storage, laundry, and services.

- The additional FSR does not result in any identifiable or adverse planning impacts when compared to a dwelling that complies numerically with the standard. There is no greater overshadowing, privacy loss, or view obstruction resulting from the minor increase in floor area.
- The proposal maintains compliant building height, compliant landscaping (147.86m<sup>2</sup>), and now includes increased side setbacks, all of which assist in reducing perceived scale and ensuring a respectful relationship with adjoining properties.
- The revised built form responds sensitively to the site's corner configuration, slope, and streetscape context, delivering an outcome that is both practical and visually appropriate.

Accordingly, the minor numerical variation to FSR is well justified on environmental planning grounds, and strict compliance with the standard would result in a less efficient and less functional outcome without any measurable benefit in terms of impacts or character.

### **Is the proposed development in the public interest and consistent with objectives of the standard and land use zone?**

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

### **Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The proposed Floor Space Ratio variation allows for the orderly and efficient use of the site in a manner consistent with the objectives of the Environmental Planning and Assessment Act 1979. The development achieves a compatible building envelope that respects the low-density residential character of the area, without resulting in overbearing bulk, height, or scale. The FSR exceedance is modest (9.4%), and the built form remains well-articulated, of a compliant height, and visually sympathetic to the surrounding streetscape. The proposal is therefore consistent with State and Regional strategic planning objectives, including those that support well-designed infill housing in established areas with existing infrastructure and services, while preserving residential amenity and neighbourhood character.

### **Public benefit of maintaining the standard**

The departure from the FSR control within the State Environmental Planning Policy allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls. Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

### **Is the Variation well founded?**

The above information demonstrates that, given the planning context and minor scale of the variation, the proposed building height represents a suitable building form for the site.



It is considered that this has been adequately addressed in Parts 3.1 to 3.5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 under the Manly LEP 2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (building height) and objectives of the R2 Low Density Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Local significance; and
- The development submitted aligns with the predominantly residential nature of the desired future character of the neighbourhood.

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## Conclusion

In conclusion, the proposed variation to the floor space ratio under Clause 4.6 is justified as it satisfies the objectives of the FSR standard, aligns with the zone objectives, and achieves better planning outcomes without causing adverse impacts. Approval of the variation is both reasonable and in the public interest. Having evaluated the likely affects arising from this non-compliance, it has been demonstrated that the development has satisfied the objectives of Clause 4.6 of the Manly LEP 2013 and the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Manly LEP 2013 to vary this development controls is appropriate and should be supported.

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