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CLAUSE 4.6 VARIATION
- ***BUILDING HEIGHT***
20/122 Bower Street, Manly

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March 2024

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CLAUSE 4.6 VARIATION – BUILDING HEIGHT

OVERVIEW

Clause 4.3 of MLEP 2013 provides that the maximum height of a building on the land is 8.5 meters. The existing 8-storey residential flat building is substantially greater, with a height of approximately 28 meters to the top of the lift overrun. The proposed window modifications and internal renovations involve works up to a height of approximately 19.3 meters above existing ground level. Clause 4.6 of MLEP 2013 makes provision for exceptions to development standards including building height provided that a written request is received from the Applicant justifying contravention of the development standard.

REQUEST

The objectives of Clause 4.6 of MLEP 2013 are:

4.6(1)

- 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 proposal is consistent with these objectives. In this case, the flexibility is sought to permit modifications to existing windows and renovation to existing level within a non-compliant building. The works will also lead to a better outcome for the residents without negative impacts to any other residents in the vicinity of the site or any public views.

4.6(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.*

Compliance with the development standard is unreasonable as it would require the existing building to be demolished, reducing the local housing stock. Such an option is contrary to the principles of environmentally sustainable development due to the resources needlessly consumed for the demolition and rebuilding of the structure.

The grounds to justify contravening the development standard are the improved residential amenity for current and future residents of the dwelling thereby enhancing local housing stock in circumstances where there are no negative impacts.

4.6(4)

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).*

The matters in subclause (3) are addressed above.

4.6(5)

(Repealed)

4.6(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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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.*

Subdivision of land is not applicable in this case.

4.6(7)

(Repealed)

4.6(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,*

The development doesn't contravene any of the development standards for complying development.

- (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,*

BASIX performance is not applicable in this case.

- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.15,*
- (cb) a development standard on land to which clause 6.19 applies.*

The development is not related to 5.4 (miscellaneous permissible uses), 5.5 (secondary dwellings on land in a rural zone), 6.15 (Tourist and visitor accommodation) and 6.19 (Development in St Patrick's Estate).