

6 July 2020

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Northern Beaches Council  
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Manly NSW 2095

**Clause 4.6 Submission for:  
Variation to Clause 4.3 Height of Buildings  
of Manly LEP 2013**

**To accompany the development application for proposed alterations and additions to  
4 LAURA STREET, SEAFORTH NSW 2092  
DA2020/0586**

**1.0 Introduction**

This Clause 4.6 variation request is in relation to alterations and additions to 4 Laura Street, Seaforth NSW 2092.

The request seeks to vary the Building Height Development Standard of 8.5m height specified in Clause 4.3 of the Manly LEP 2013.

The height of the proposed balcony roof is RL26.644 which is 1.704m above the permitted height. This is a variation of 20%. The proposed roof is 110mm below the height of the existing building roofline.

**2.0 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case**

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there is sufficient grounds to justify contravening the development standard.

Part of the existing site does not comply with the required Building Height. Strict compliance for the roof above the existing balcony would be therefore considered unreasonable given that the development is below the existing roof height.

An assessment is provided below in regard to the five part test under *Wehbe v Pittwater Council*. As demonstrated below, there are sufficient environmental planning grounds to justify the variation and compliance with the standard is considered unreasonable and unnecessary in this instance.

As demonstrated below, the proposal satisfies number one of the test established in *Wehbe* and for that reason, the development standard is considered unreasonable and unnecessary in this instance.

**Test 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

It is felt the objectives of the standard have been achieved notwithstanding non-compliance with the numerical standard as detailed below.

*(1) (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*

The proposed roof is consistent with the topography of the site as it is located above an existing balcony and will not require any earthworks. No vegetation will be removed. It is below the existing building roof height of the dwelling. The roof will have no impact on the streetscape as the existing dwelling and neighbouring garage are built up to the side boundary providing no view corridor between the sites and therefore blocking any view to the balcony.

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

The proposed roof will be flat and has a total area of 1.75m<sup>2</sup>. It will sit 110mm below the existing roof line. As the roof will not be visible from the street or foreshore it will not add and bulk or scale to the existing dwelling.

*(c) to minimise disruption to the following—*

*(i) views to nearby residential development from public spaces (including the harbour and foreshores),*

There will be no disruption to nearby residential development from public spaces as the roof will not be visible from the foreshore or street.

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

The existing dwelling and neighbouring garage are built up to the side boundary providing no view corridor between the sites. The proposed roof will not block views from neighbouring properties to public spaces as the existing dwelling and neighbouring garage at No.3 screens the balcony from the street.

*(iii) views between public spaces (including the harbour and foreshores),*

The proposed roof will not block views between public spaces as the proposed works are towards the front of the existing dwelling. The existing dwelling and neighbouring garage at No.3 screens the balcony from the street. The existing dwelling and neighbouring dwelling are built up to the side boundary providing no view corridor between the sites.

*(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,*

The roof is only 1.75m<sup>2</sup>, situated above the existing balcony and below the existing roofline. The balcony is adjacent to the neighbours garage which is not a habitable room and not the private open space of the neighbouring site.

No additional afternoon shadows would fall on the neighbours garage as the proposed roof is below the height of the existing dwelling.

*(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.*

No existing vegetation or the sites topography will be affected by the works. The proposed roof is above an existing balcony and required no vegetation to be removed or any earthwork.

**Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

As it has been established the objectives have been met in Test 1, compliance with Test 2 is not applicable.

**Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

As it has been established the objectives have been met in Test 1, compliance with Test 2 is not applicable.

**Test 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.**

As it has been established the objectives have been met in Test 1, compliance with Test 2 is not applicable.

**Test 5. The compliance with development standard is unreasonable or inappropriate due to the existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

As it has been established the objectives have been met in Test 1, compliance with Test 2 is not applicable.

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

It is submitted that the variation is well founded and worthy of the Council's approval. The request relates to varying the Building Height for the proposed roof above the existing balcony.

The roof is minimal with an area of only 1.75m<sup>2</sup>. There is no impact on the neighbouring site being located adjacent to their garage. No additional afternoon shadows would fall on the neighbours garage as it is below the height of the existing dwelling.

The proposal seeks to provide a covered roof over the existing balcony. The area cannot be used as an outdoor entertaining area being less than 2m<sup>2</sup> and being located off a bedroom. It does not result in any adverse impacts on the area or any neighbours.

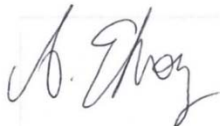
- The contravention of the height control by the proposal does not give rise to any environmental effect of sufficient significance that would cause concern.
- There is no impact to existing quantity of sunlight to the neighbouring garage.
- The additional roof area is minor and will have no effect to the bulk of the existing building as it will not be visible from the street or foreshore.

### **Conclusion**

For the reasons provided above, it is felt there is sufficient environmental planning grounds to justify contravening the height of buildings development standard for the proposed balcony roof.

- The proposal is consistent with the objectives of the building height standard
- The proposal is consistent with the character of the area and will have no impact to neighbouring properties and will not cause any overshadowing.
- The development is a minor modification to the existing building and will not obstruct views and as such is consistent with the objective.
- The roof is above a non-habitable area.
- The proposed balcony roof is below the existing roof structure of the building.

Based on the reasons outlined above, we request the variation to Clause 4.3 – the height of buildings development standard is supported by council.



Amanda Elboz  
Director

## SITE PHOTOS



No.4  
Subject  
Site

No. 3  
garage

*Image 1 – Subject Site Street View courtesy of Google Maps*



No. 3  
garage

Existing  
Balcony

*Image 2 – Subject Site Aerial View courtesy of Google Maps*