

15 February 2019

Ref: 2018056 (Version 1.1)

General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

CLAUSE 4.6 VARIATION (FSR) IN RELATION TO THE PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING AT 39 ADELAIDE STREET, CLONTARF

1. INTRODUCTION

The following Clause 4.6 Variation request has been prepared on behalf of Linked Project Management in support of the proposed variation to the maximum floor space ratio (FSR) development standard in relation to the proposed alterations and additions to the existing dwelling at 39 Adelaide Street, Clontarf.

The maximum permissible FSR for the site is 0.4:1, relating to a gross floor area (GFA) of 181.9m². The proposed FSR is 0.64:1, with a GFA of 289.3m².

The existing GFA is 187m² and FSR of 0.41 and already exceeds the maximum permissible FSR for the site.

The site falls approximately 7.8m from the highest point along Adelaide Street towards the back corner of the site. Resulting in a ground-floor level along Adelaide Street and a lower ground-floor level. The existing GFA includes the ground-floor and lower ground-floor areas.

The proposal seeks to include a new first-floor addition of 89.2m² and some other minor alterations to better utilise the existing space. There is no proposed increase in the overall building footprint or any loss of private open space or landscaped area to accommodate the increased GFA.

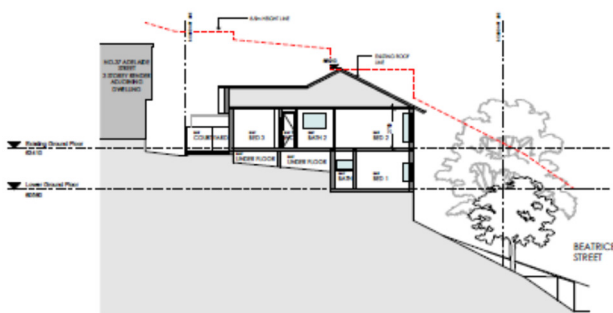


Figure 1

Extract of the existing section highlighting the steep topography and ground-floor and lower ground-floor areas



Figure 2

Extract of the proposed section highlighting the first-floor addition within the existing building envelope



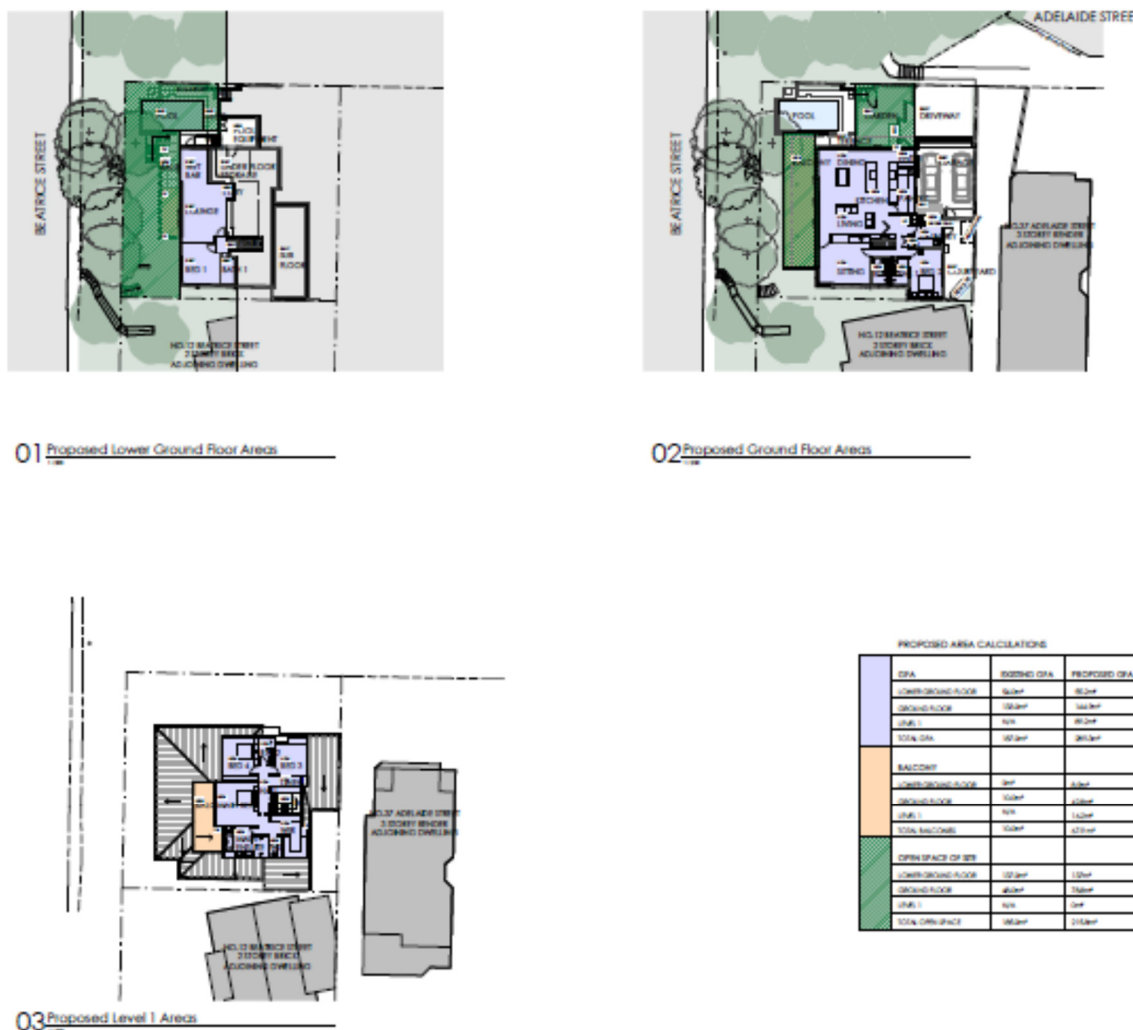


Figure 3
Extract of the area calculations showing the existing and proposed areas.

2. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 Exceptions to Development Standards of the MLEP 2013 provides a mechanism by which a development standard can be varied.

The objectives of this clause as outlined in Clause 4.6(1) are:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(2) provides 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.

The NSW Land and Environment Court decisions of *Wehbe v Pittwater Council* (2007) LGERA 446; and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 provide assistance on the approach to justifying a contravention to a development standard.

3. CLAUSE 4.6(3)(A): UNREASONABLE OR UNNECESSARY

The case of *Wehbe* provides examples of how a variation to a development standard can be shown to be unreasonable or unnecessary (as required by clause 4.6(3)(a)). Although this case related to a variation of development standards under SEPP 1, it has been adopted as being of continuing relevance to variations under clause 4.6.

The examples provided in *Wehbe* are:

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 of the standard 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 particular 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.*

The applicant seeks a variation to the FSR development standard, which is considered unreasonable and unnecessary in the circumstances of the case on the basis of *Wehbe* reasons 1 and 3, as explained in detail below. The other heads of consideration under Clause 4.6 are also addressed below.

4. FLOOR SPACE RATIO

4.1 The Standard to be Varied and the Extent of Variation

The standard the applicant seeks to vary is *Clause 4.4 Floor Space Ratio* in the Manly Local Environmental Plan (MLEP) 2013.

A floor space ratio of 0.4:1 applies to the site, and the proposal seeks a floor space ratio of 0.64:1, a variation of 57%.

Clause 4.4 states:

4.4 Floor space ratio

(1) *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.*

(2) *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](#).*

(2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

4.2 4.6(3)(a): Unreasonable or unnecessary in the circumstances of the case

Compliance with the floor space ratio standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the floor space ratio standard are achieved, notwithstanding the numerical non-compliance, as explained below.

The perceived bulk of the proposal is, to a large extent, determined by the height of the building, which is a response to the steeply sloping site. The non-compliance with the floor space ratio standard is a consequence of making appropriate use of the resulting building envelope to provide habitable floor space to maximise the amenity of the proposed dwelling.

Considering that the height is below the maximum permissible for the site and the streetscape presents as a two-storey development to Adelaide Street and as being consistent with the Beatrice Street streetscape, there would be no utility in strictly enforcement of the floor space ratio control, as this would simply result in the creation of voids or non-habitable spaces within the building envelope and will not reduce the bulk or scale of the development.

In addition, the site area (452.8m²) is less than the minimum lot size requirement on the LEP Lot Size Map. In accordance with Area U on the Lot Size Map, a minimum lot size of 1,150m² applies to this site. The MDCP states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 is to be no greater than the achievable FSR for the lot size in Area T.

The FSR calculation for the proposed development based on a minimum lot size of 1,150m² would result in an FSR of 0.25:1 which is compliant with the numerical requirement (0.40:1). In considering the undersized nature of the lot, strict compliance with the FSR numerical requirement is considered unreasonable.

Consistency with the FSR Objectives

The underlying object or purpose of the standard, in terms of ensuring that the bulk and scale of development is consistent with the existing and desired future character of the area, would be defeated or thwarted if compliance was required and compliance with the standard is also unreasonable for this reason.

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The bulk and scale of the proposal is entirely consistent with the existing streetscape, and the desired future streetscape character (having regard to the relevant planning controls for the area).

The dwelling is part 3 storey (consistent with the 3 storey DCP requirements) and it will read as 2 storeys from Adelaide Street.

(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 view analysis confirms that the development would not obscure any important landscape and townscape features. Because of the surrounding topography, and nearby dwellings constructed on much higher ground, the proposed dwelling will not be visually prominent.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

The proposed development is a high-quality design making a positive, contemporary contribution to the streetscape and will be consistent with 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,

The proposal has been carefully designed to minimise any impacts on adjoining land in terms of solar access, privacy, and view sharing. There will be no unreasonable impacts on the amenity of adjoining land or 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.

This objective is not relevant to the proposed development.

Consistency with the Zone Objectives

The proposed building form is consistent with the objectives of the *R2 Low Density Residential* zone, as follows:

To provide for the housing needs of the community within a low density residential environment.

The proposed dwelling provides a low-density form of housing that fits well within the existing streetscape. To insist on a strict application of the floor space standard, in the context of this unusual site, would either:

- result in a dwelling of low amenity which does not adequately respond to the housing needs of the community; or
- result in a dwelling of the same bulk and scale, but with less useable floor space, which would not be an adequate response to the housing needs of the community.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

This objective is not relevant as the proposed use is a dwelling house.

4.3 4.6(3)(b): sufficient environmental planning grounds to justify the contravention

The proposed built form is a well-considered response to the particular constraints of the site, being the irregular shape and steep topography. It provides a dwelling which is a high-quality design, consistent with the streetscape.

It is reasonable to maximise habitable floor space within the building envelope, in order to best provide for the housing needs of the community, particularly having regard to the increasing trend for adult children to remain living at home with their parents well into their twenties.

The proposed floor space will provide additional housing for a growing population and demand for suburban Sydney residential accommodation.

The proposed building envelope is an appropriate correlation with the size of the site and the extent of the development as it is generally consistent with the overall building envelope and setbacks in the locality.

The additional floor space, on its own, has no impacts on any surrounding land or the public domain.

Allowing a variation to the floor space standard, in the context of this particular site and this particular design, would promote:

- the proper and orderly development of land; and
- good design and amenity of the built environment,

which are express objects of the *Environmental Planning and Assessment Act 1979* (section 1.3(c) and (g)).

4.4 4.6(4)(a)(ii): the public interest

Clause 4.6(4)(a)(ii) requires that consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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"*.

The proposed development is consistent with the objectives of the FSR development standard, and the objectives of the zone, for the reasons discussed above.

4.5 4.6(1): objectives of clause 4.6

The proposed variation to the FSR standard, for the reasons explained above, is clearly consistent with the objectives of clause 4.6, which are:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

4.6 Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the FSR development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would provide a dwelling of relatively poor amenity for its occupants, which would be inconsistent with the surrounding developments and topography.

There are no other relevant matters required to be taken into account by the Secretary.

Should you have any queries or require clarification on any matters please do not hesitate to contact me on 0414402203.

Yours sincerely,



Craig Schulman

Director

Master of Urban and Regional Planning
Bachelor of Science (Resource and Environmental Management)