

**PROPOSED CHANGE OF USE TO A DWELLING
35 PINE STREET, MANLY**

Clause 4.6 - Exceptions to Development Standards

Variation to Clause 4.4 - Floor Space Ratio

The subject site is located within the “F” floor space area zone and as such is ordinarily subject to a maximum FSR of 0.6:1.

The existing FSR for the site is 0.76:1 and although the proposal reduces the FSR to 0.67:1 it results in a technical non-compliance with this control.

The proposed development will result in a built form that has a gross floor area of 483.3m² or 0.67:1, which is in excess of the 0.6:1 FSR control as required by Clause 4.4 of the Manly Local Environmental Plan 2013.

Given that the proposal does not comply with the floor space ratio control and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP 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.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.4 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.4 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.4 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that compliance with the requirements of Clause 4.4 is both unreasonable and unnecessary in the circumstances of this case for the reason that the proposal is consistent with the objective of the standard.

In addition to the above it is noted that:

- The subject site currently has a floor area of 547.1m² and which equates to an FSR of 0.76:1.
- The proposal will result in a reduction of FSR with the proposed FSR being 0.67:1.

On the basis of the above it is submitted that compliance with the standard is unreasonable given that the relevance of the standard has been diminished by the previous actions of the Council in approving the existing FSR for the site and noting the proposed FSR will result in a reduction.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified on environmental planning grounds given that the existing building currently exceeds the maximum FSR permitted under the MLEP 2013 and the proposal represents a reduction in the FSR from 0.76:1 to 0.67:1.

5. Is the proposed development 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 in my opinion in the public interest because it will provide for the cessation of the existing backpacker' accommodation use upon the site and will provide for the high quality conversion of the existing building to a single dwelling in a manner which will make a positive contribution to the built form character of the locality. The proposal is considered to be otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

The objectives for the R1 - General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal seeks to provide for alterations and additions to the existing building erected upon the subject site as part of an application which includes a change of use to a dwelling house. The proposal is, therefore considered to be consistent with this objective.

In relation to the objectives of Clause 4.4 of the LEP the following assessment is provided:

(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.*

It is considered that the proposal will be in harmony with the bulk and scale of surrounding buildings and the streetscape and results in a reduced FSR when compared with the approved backpacker's accommodation building currently erected upon the site.

Importantly the proposal seeks to reduce the existing FSR for the site from 0.76:1 to an FSR of 0.67:1.

On this basis it is my opinion that the proposal is consistent with the applicable objectives of both the zone and the standard.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given that the proposal reduces the existing FSR. In my opinion the proposed alterations and additions will improve the built form when viewed from the Pine Street.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the floor space ratio requirements of Clause 4.4 of the Manly LEP 2013 is appropriate in this instance.

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