

**CLAUSE 4.6 VARIATION – FSR
ALTERATIONS AND ADDITIONS TO EXISTING (INCOMPLETE) BUILDING
95 GURNEY CRESCENT SEAFORTH
DECEMBER 2019**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Manly Local Environmental Plan 2013 for Northern Beaches Council.

The objectives of Clause 4.6 are as follows:

- (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.

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the accompanying Development Application drawings prepared by Mark Hurcum Design Practice and Statement of Environmental Effects.

The unique situation of this project is that the proposed DA is for an extension to an unfinished building shell undertaken by another applicant and architect, and this has been “under construction” for around 20 years. The original approval for the current building was approved in 1999. A final S.96 application for a revised scheme was approved 2011.

The proposal is to add another level on the existing concrete roof as well as extending out the approved carport and enclosing it as a garage and an office. This work exceeds the height limit.

1.0 Zoning of the Land

The subject site is zoned E3 “Environmental management”

2.0 Objectives of the Zone

The objectives of zone are as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

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3.0 Standard to be Varied

The standard to be varied is Part 4, Clause 4.4 of LEP2013, which sets the maximum FSR for a building as shown on the FSR Map. The maximum FSR for 95 Gurney Crescent is 0.4:1.

In the DCP there is a provision for undersized lots, which No.95 is. On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied.

This standard assumes building works added to existing buildings must also comply with the standard.

The following definitions within the LEP or DCP are relevant for this 4.6 variation

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

habitable floor area (for the purposes of the Flood Prone Land paragraph in this plan only) means:

- a) In a residential situation: any floor containing a room or rooms used or capable of being adapted for use for residential purposes, such as a bedroom, living room, study, dining room, kitchen, bathroom, laundry, toilet
- but excluding any floor used solely for the purposes of car parking or storage;

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4.0 Objectives Pertaining to Standard to be Varied

The objectives that relate to the building height standard is found in LEP 2013 and referenced in DCP paragraph 4.1.2.

“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.*

5.0 Extent of Non Conformity to the Standard

Maximum FSR permitted for this site as per LEP is 0.4:1 which gives a Gross Floor Area (GFA) of 237.8 sq.m. However under DCP there is an exception to FSR for undersized lots in areas U on the LEP LSZ map where the maximum floor area is a calculation of FSR based on 750 sqm lot size/ site area, which equals to 300sq.m, which is 0.5:1

The site area is 594.4 sq.m

Existing Building GFA is 240.6 sq.m which equals to an FSR of 0.40:1

The allowable GFA is 300 sq.m which equals to an FSR for this site of 0.50:1

The Proposed building GFA is 382.9 sq.m which equals to an FSR of **0.64:1** when calculated against the site area (594.4) or 0.51:1 if calculated against the 750 sq.m lot size.

The proposed building therefore exceeds the allowable FSR by 0.14:1, or 14%

However, it is noted that it would appear that the approved (current) scheme really contains large areas of unenclosed space that do not count at FSR. Filling this in as proposed (eg adding a bathroom and laundry at the pool level) increased the GFA **without** increasing bulk and scale. Further, they actually constructed on site a larger building area than approved (one of the reasons for previous stop-work orders). Counting this in then the existing building doesn't match the FSR number as approved. In terms of the new works, only the garage, office and Master bedroom is actually a floor area increase that also increases the bulk and scale.

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To demonstrate this, the GFA has been broken down in the following table into GFA per type and per floor. This is also described in colour in the FSR diagram.

Of note is the additional area that is proposed outside of the approved envelope is only 95.5 sq.m, which is only 25% of the overall GFA. However, even this area includes some new floor area constructed below the side retaining walls, and therefore essentially invisible. There is another 46 sq.m of additional area that is officially counted within the approved envelope, which does not add any bulk and scale to the site at all. This area, which equates to 12% of the overall floor area, is area that was, in our opinion, always intended to be internal area but not declared in the original approval.

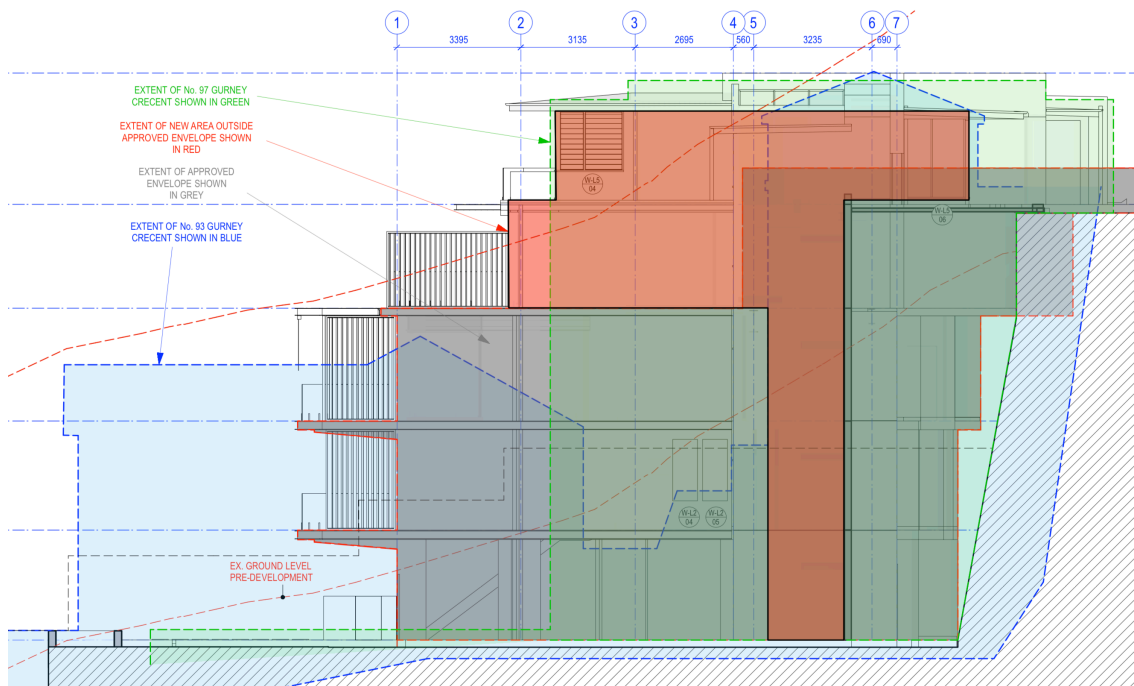
FIG. 1 BREAKDOWN OF GROSS FLOOR AREA AND FSR CALCULATION

SITE AREA	ORIGINAL APPROVED DA	ADDITIONAL AREA INSIDE OF APPROVED ENVELOPE	PROPOSED ADDITIONAL FLOOR AREA OUTSIDE APPROVED ENVELOPE	PROPOSED TOTAL PER FLOOR
				594.4m ²
LEVEL 5			39.7m ²	39.7m ²
LEVEL 4	38.7m ²		48.2m ²	86.9m ²
LEVEL 3	100.7m ²	13.0m ²	5.0m ²	118.7m ²
LEVEL2	101.2m ²	9.6m ²	2.6m ²	113.4m ²
LEVEL1		24.2m ²		24.2m ²
TOTAL	240.6m²	46.8m² + 240.6m² = 287.4	95.5m² + 287.4m² = 382.9	382.9m²
FSR	0.40:1	0.48:1	0.64:1	0.64:1

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To further describe the difference between visible and invisible additional area, this can be seen in section – with an overlay of the neighbouring buildings as well so that it is possible to see where new area is matching existing (particularly No. 97)

Fig 2 – ENVELOPE COMPARISON



The section diagram shows the new area in red and the existing approved envelope in grey. This sits against the neighbour at No.97 (in green) and the neighbour at No.93 (in blue).

This demonstrates how reasonable the additional area actually is in terms of real impact. The proposal, despite the numerical end-point, is NOT making the building 50% larger.

6.0 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposed final FSR does not comply with the FSR control, however this non-compliance is justifiable and strict compliance can be regarded as unreasonable or unnecessary for the following reasons.

6.1 Analysis of “Visible” and “Invisible” GFA

The main reason for why strict compliance can be regarded as unreasonable is that, as noted above, the previous approval already created a large amount of floor area – declared and undeclared, that is effectively “Invisible” and constructed within a deep excavation.

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It is reasonable to argue that such a depth of excavation would not have been approved under current policies, but in the calculation for this application it still adds to the total GFA.

The FSR control is effectively used to control bulk and scale as viewed from outside the building – from the street, from public places and from neighbours. If you discounted any “Invisible” GFA for the parts of this building that are below the surrounding retaining wall, the proposal would easily comply with the FSR control. All other buildings in the area have a much larger proportion of this bulk and scale as visible. This is a unique case and as such is it unreasonable to require strict compliance of the proposal based on bulk and scape when much of this is not visible.

6.2 Existing surrounding conditions and similarly approved examples.

Another factor for why strict compliance can be regarded as unreasonable or unnecessary is that the proposal is to be constructed directly beside a similar scale (and non-complying) building to the North (No.97). No.97 is a very rectilinear boxy development that includes an enclosed garage at the top level and then 4 stories below this. Like No.95, the fall in the natural ground level means that No.97 definitely does not comply with the height control and they submitted a Clause 4.6 (SEPP1) with their DA, which was approved. The proposal at No.95 is actually more articulated, stepped and less intrusive than No.97.

Two doors down No.91 Gurney is currently under construction and it too is well over the height limit and they also submitted a Clause 4.6 that was approved.

In this instance, therefore, applying strict compliance to our proposal would not provide any benefit as this site can already be read as existing between these two non-complying envelopes.

It is noted that there are a great many developments in Gurney crescent that have been approved over the last number of years that have almost all of them has FSR noncompliance, as follows. However, on a detailed review of these applications, it is questionable how accurate some of these calculations are and a number of larger scale developments are described with some questionably small GFAs:

97 Gurney Crescent – Approved FSR of 0.54:1
91 Gurney Crescent – Approved FSR of 0.6:1
89 Gurney Crescent – Approved FSR of 0.46:1
81 Gurney Crescent – Approved FSR of 0.68:1
34 Gurney Crescent – Approved FSR of 0.48:1
36 Gurney Crescent – Approved FSR of 0.48:1

Therefore is it unreasonable by comparison to require strict compliance of the proposal based on bulk and scape when the proposal matches approved neighbouring developments.

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6.3 Lack of impact to surrounding properties from non-complying portions of GFA.

As noted above, this proposal utilises an existing unfinished shell from a previously approved DA. Only parts of the proposed DA (namely the Garage, Office, Master bedroom and lift/stair) is an extension of the previously approved building envelope. It is noted therefore that the impact difference of these new areas should be how to assess the level of impact on neighbouring properties.

It is acknowledged that this development does have a Height non-compliance as well as an FSR non-compliance. But due to the unique situation of this development – as noted above containing large areas of “invisible” GFA, it is more difficult to argue that it is specifically the non-complying FSR that causes any detrimental impact to neighbours.

The major possible impact is overshadowing and over looking to the property to the South (No.93), however their house is quite a different formation to any of the surrounding neighbours. They have a roof carport at the street, raised on very tall pillars with a rocky garden bed and terraced lawns underneath, and their main house is disconnected and much further down the block. As such, there is a much lesser impact for this neighbour than if their main house had been directly adjacent to the subject building.

An analysis of the shadow impact shows that the majority of shadow impact to their house, which only occurs between 9am and 12pm, is from the existing approved slab structures. The new additions do add further shadow, but as most of this additional shadow falls on their roof it doesn't create an additional impact resulting from the non-complying portion.

Therefore is it unreasonable to require strict compliance of the proposal based on the fact that there is very little demonstrable impact to surrounding neighbours.

6.4 Development of previously approved design (not by Applicant).

The current Applicant did not design or construct the previously approved scheme that was left unfinished. That design was essentially a 5 storey but only 2 bedroom house. It made no sense and was incredibly vague in terms of where external areas stopped and internal areas began. The evidence of the history of the project shows that it is unlikely that the previous developer was ever going to leave it as per the approval and they were regularly being stopped due to construction of unapproved works. Our Client wishes to develop the unworkable existing approval into a home much more suited to the site as well as suited to their lifestyle. Therefore is it unreasonable to require strict compliance of the proposal considering it has to work with the structure of what has already been constructed.

6.5 Despite the non-compliance, the proposal achieves all objectives of the development standard.

As covered below, despite the non compliance with the standard the Aims and Objectives are still met.

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7.0 Compliance with the Objectives Pertaining to Standard to be Varied

- 7.1 to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

This objective specifically references “Streetscape character” and in this instance the streetscape façade is only a single storey appearance, entirely matching (but with better materiality and articulation) the development at No.97.

- 7.2 To control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Again, this DA incorporates a large amount of approved but sunken GFA and the large excavation and retaining wall as constructed would probably not have been approved under today’s policies. So in effect, any impact on the existing landscape has already been made. Adding additional floor area as proposed doesn’t necessarily mean the impact will increase. In fact there is no additional proposed site coverage and the additional areas are constructed on top of the existing shell. Further, the proposal does not obscure any landscape or townscape features.

- 7.3 To maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

It is acknowledged that the FSR does effectively control bulk and scale and non-compliance of FSR could – if not well managed – have a detrimental impact on the existing character of an area. However, if this was the only non-complying building being proposed then the argument would be a lot stronger that the development is inappropriate. But as noted above, the building sits between two larger, taller and equally non-complying buildings (No. 97 and No.91), plus the perception from the street is only of the single storey complying section.

- 7.4 To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

In undertaking the proposal the amount of solar impact to the neighbour to the South was carefully assessed. Firstly, it should be acknowledged that the relative positions of the buildings to each other plays an important role in determining the level of impact. The property to the South (No.93) is an undeveloped residence with a carport on tall pillars at the street then a big gap between this and the house, which is much lower down and much further forward than the subject site existing residence.

It also needs to be acknowledged that there is already a substantial development as approved and partially constructed on No. 95 and the level of shadow impact needs to be judged as what is additional to the approved and constructed building.

On close analysis of the existing and the proposed shadow impact to No.93 there is no real change to the shadow impact as the new shadow of the additional area (including the non-complying portion) falls on the roof of the neighbour or the zone in between the carport and house. No.93 still achieves the same sunlight amenity in the afternoon to their living areas and this is unchanged.

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In terms of public domain, the proposal does not impact on the street side of the public domain and from the water side it sits against a collection of similar examples, as noted above.

- 7.5 *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.*

Not applicable

8.0 Conclusion

It is submitted that a variation to the maximum FSR control within Manly Council LEP2013 is appropriate for this project as the non-conformity does not add any specific impact to adjoining or nearby properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

As demonstrated above, strict compliance with this standard is inappropriate to this Development Application.

Approval should not therefore be withheld due to the non-compliance of the development standard.