

21st March 2019

Mr Ben Price
Northern Beaches Council
725 Pittwater Road,
Dee Why

Dear Ben,

**DEVELOPMENT APPLICATION REFERENCE DA2019/0019
ALTERATIONS AND ADDITIONS TO AN EXISTING SEMI-DETACHED DWELLING
7 CARLTON STREET, MANLY**

**CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO DEVELOPMENT STANDARD
CONTAINED IN THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

1.0 INTRODUCTION

This Clause 4.6 request is provided to vary the development standard pertaining to the floor space ratio contained in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP) in relation to the proposed alterations and additions to the floor space ratio control.

2.0 DEVELOPMENT STANDARD

Clause 4.4 of the Manly LEP 2013 requires a maximum floor space ratio (FSR) of 0.6:1 (108.3sqm) on the site. The total site area is 180.5sqm. As a result of the proposed additions, the floor space ratio results in a maximum FSR of 0.83:1 with a Gross Floor Area of 150sqm. This exceeds the maximum permissible FSR by 41.7sqm or 23%.

The exceedance of the FSR standard is a direct result of the fact that the site is a small undersized lot. The site area is 69.5sqm under the minimum lot size requirement of 250sqm pursuant to the Manly LEP 2013. If the total proposed gross floor area (150sqm) were applied to a minimum lot size of 250sqm, this would yield a compliant FSR (0.6:1) based on the minimum lot size of 250sqm. A variation is therefore also requested pursuant to Clause 4.1.3.1 of the Manly DCP 2013, which allows for a variation to the FSR standard for undersized lots.

3.0 CLAUSE 4.6 MANLY LEP 2013 EXCEPTION TO THE DEVELOPMENT STANDARD

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause 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.*

Pursuant to clause 4.6(2) 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) 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, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Secretary must consider:

- (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.*

This submission is the applicant written justification for the variation of the standards as per clause 4.6(4)(a)(i) of the MLEP.

4.0 CLAIM FOR VARIATION

Zone and Zone Objectives

The subject property is zoned R1 General Residential pursuant to Manly Local Environmental Plan 2013 (MLEP 2013). Dwelling houses are permitted with consent. The stated objectives of the E3 zone are as follows:

- *To provide for the housing needs of the community;*

Response: the proposal provides for a semi-detached housing form, which accords with the surrounding residential land uses and provides for the housing needs of the community.

- *To provide for a variety of housing types and densities;*

Response: The proposal provides for a semi-detached housing form, which continues the higher density, finer grain housing typologies, found in highly accessible locations such as Manly.

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

Response: The proposal continues the residential land use of the site, which considered to be the most appropriate land use on the site.

There are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Floor Space Ratio Development Standard

Pursuant to Clause 4.4 of MLEP 2013 the objectives of the clause are:

- 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 has been determined that the proposal has a gross floor area of 150sqm representing a floor space ratio of 0.83:1 and is therefore non-compliant with the FSR standard by 41.7sqm (23%).

Having regard to the stated objectives and pursuant to Clause 4.6(3)(a) it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- The site is below (69.5sqm under) the minimum lot size requirement pursuant to the Manly LEP 2013 and would yield a compliant FSR (0.6:1) based on the minimum lot size of 250sqm. A variation is therefore requested pursuant to Clause 4.1.3.1 of the Manly DCP 2013.
- The proposed development adhered to the objectives of the R1 General Residential Zone in relation to residential development.
- The proposed development is consistent with the objectives of the floor space ratio development standard as set out under Clause 4.4(1) of the MLEP 2013 in that:
 - a) The proposed alterations and additions are directly comparable with the height, bulk and scale of the recent alterations and additions as constructed to number 9 Carlton Street, Manly (as approved in 2012 Reference DA147/2012). The proposed works are entirely consistent with the scale of additions to the row of houses and there is considered to be no adverse impact on the existing or desired future streetscape character;
 - b) No existing valuable landscape or townscape features will be lost as a result of the proposed development;
 - c) The height, bulk, scale and floor space proposed are entirely consistent with the built form characteristics established by adjoining development (in particular the recent additions to the adjoining property at number 9 Carlton Street) and development generally within the sites visual catchment.

- It has been determined that the floor space ratio proposed will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal provides for the sharing of public and private views.

Pursuant to Clause 4.6(3)(b) there is considered to be sufficient environmental planning grounds to justify contravening the floor space ratio development standard in that:

- The proposal is considered to satisfactorily meet the objectives for the R1 General Residential and the objectives of the floor space ratio development standard as detailed above;
- The subject site is an undersized allotment. Based on the minimum lot size for the site under the MLEP 2013 (250sqm), the proposed FSR of 0.6:1 would comply with the standard;
- Pursuant to the objectives contained in Clause 1.3(g) of the Environmental Planning and Assessment Act 1979 (as amended); the proposed alterations and additions to the existing dwelling are innovative and of high architectural merit. The proposed works provide a site specific design response which respects the location of the property within a heritage conservation area, whilst ensuring that residential amenity in terms of privacy, solar access and view sharing is maintained to adjoining residential properties.
- The additional gross floor area is appropriately sited at the first-floor level. The additional floor area will not impede upon the private open space for the dwelling, which is compliant with Councils controls. The proposed works results in an enhancement the soft landscaping on the site through the removal of a fully paved rear courtyard and replacement with lawn and landscaped gardens.
- It has been determined that the floor space ratio proposed will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal does not impede upon and continues to provide for the sharing of public and private views;
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the height of the proposed additions offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly it can be reasonably concluded that the proposed alterations and additions to the dwelling are entirely consistent with the height and scale of additions in the immediate vicinity of the site, in particular number 9 Carton Street.

- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.
- The proposal accords with the matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979.

Conclusions

Having regard to the clause 4.6 variation provisions of the Manly LEP 2013, we have formed the considered opinion:

- a) That the contextually responsive development is consistent with the zone objectives, and
- b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

Please don't hesitate to contact me should you have any questions.

Yours Sincerely



Kate Fleming
BBF Town Planners
Director