

CLAUSE 4.6 – VARIATION REQUEST

FLOOR SPACE RATIO
DEVELOPMENT STANDARD
UNDER CLAUSE 4.4 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013
FOR
ALTERATIONS AND ADDITIONS
TO EXISTING DUAL OCCUPANCY
COMPRISING BASEMENT WORKS TO
NO.82 BOWER STREET,
MANLY
(LOT 5 DP 8075)

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CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.4 FLOOR SPACE RATIO OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013). A variation is sought in relation to the Floor Space Ratio development standard and associated maps of the MLEP 2013, in relation to the provision of additional floorspace to the Lower Ground Floor of the approved dual occupancy at 84 Bower Street Manly.

Clause 4.6 – Exceptions to Development Standards

4.6 Exceptions to development standards

- (1) The objectives of this clause 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.*
- (2) Development 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.*
- (3) Development 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.*
- (4) Development 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.*
- (5) 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.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*

- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4, (ca) clause 6.15,*
- (cb) a development standard on land to which clause 6.19 applies.*

COMMENT

Clause 4.4 Floor Space Ratio of the MLEP 2013 is a development standard that is not subject to any of the specified exclusions from the operation of Clause 4.6. This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386, *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Wehbe v Pittwater Council* [2007] NSWLEC 827. The submission addresses the requirements of Clause 4.6. This written application seeks an exception to a development standard as the proposal will exceed the Floor Space Ratio Development Standard set at .45:1 under Clause 4.4 of the MLEP 2013 and maps thereunder.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

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.*

COMMENT

The subject site is identified as being located within Area “C” under the provisions and Maps of the MLEP 2013 and is subject to a maximum FSR of 0.45:1, a maximum Gross Floor Area of 314 square metres. The requested variation to this standard is 0.74:1, a Gross Floor Area of 515.01 square metres.

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The purpose of the Floor space ratio Development Standard is stated in the objectives in Clause 4.4 of the MLEP, and is as follows;

4.4 Floor space ratio

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- (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.*

COMMENT

The proposal satisfies the objectives of Clause 4.4 as follows-

- (a) The proposed works to the Lower Ground Floor will be consistent with the existing and desired streetscape character as evidenced by the approval of the major work under DA 168/2017.
- (b) The proposed development will not obscure important landscape or townscape features as the proposed structures are below the existing ground level.
- (c) The proposed works to the Lower Ground Floor will maintain the visual relationship between the proposal and the existing character which is typified by dwellings of the configuration and form proposed.
- (d) The use and enjoyment of the public land will not be adversely impacted.
- (e) This objective is not relevant for this assessment.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The breach of the development standard cannot be described as minimal however, is an increase of 52.98 square metres over the approved gfa for the subject site, which is minimal.

The proposal is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach by the proposed additional floor space to the Lower Ground Floor level of No.82 will be imperceptible to the public, does not overshadow any public open space and provides for an essential laundry and associated rooms to provide for the amenity of residents of the subject site without amenity cost to the locality.

The resultant gross floor area does not result in any overshadowing or privacy impacts and provides for additional residential accommodation and utilities in a sensitive design.

**5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO
JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

As the proposal endorses the relevant MLEP Objectives by providing consistent character of the locality, I am of the view that there are sufficient environmental planning grounds to justify the contravention of the development standard.

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

(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 Director-General has been obtained.

COMMENT

The matters required to be addressed by subclause (3) are addressed in Parts 4 and 5 of this submission and is consistent with the objectives of the E3 Zone.

In terms of the Objectives of the standard, these are addressed in Part 3 of this request. In terms of the Objectives within the zone, the Objectives of the E3 Environmental Management zone are as follows;

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposal will not impact upon the ocean front elevation of the subject site and will be consistent with aesthetic values of the approved structure.

- To provide for a limited range of development that does not have an adverse effect on those values.*

The development is limited as the proposed works, are below ground level and will not have an adverse impact upon the defined values under the Manly Development Control Plan.

- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed will not be visible from the foreshore, nor will the works require the removal of any trees or tree canopies.

- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural*

vegetation.

The proposed Lower Ground Floor works will have no negative impact upon nearby foreshores, significant geological features or bushland and will not result in the loss of any 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.*

The immediate foreshore area will not be impacted upon by the subject proposal whilst stormwater from the subject site will be controlled by approved on-site detention devices to enable the objective to be met.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The Lower Ground Floor works are below ground and will not contribute towards height or bulk visible to the surrounding locality.

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the objection is well founded and the breach of the standard being minor with no material impacts is well founded and worthy of support and will not result in an undesirable precedent due to the merits of the proposal.

A handwritten signature in black ink, appearing to read 'Lance Doyle', is centered on the page. The signature is fluid and cursive, with a large initial 'L' and 'D'.

LANCE DOYLE

M. PLAN (UTS) B. APP SC. (UWS) MPIA

Dated: February 2019