

## **Clause 4.6 - Exceptions to Development Standards**

### Variation to Clause 4.3 - Height of Buildings

The proposed development will result in a built form which has a height in excess of the maximum 8.5m height of building control as required by Clause 4.3 of the Manly Local Environmental Plan 2013.

The existing building erected upon the site currently has a height of 10.26m.

The proposed alterations and additions have a maximum building height of 10.41m resulting in a technical non-compliance.

The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.

Given that the proposal does comply with the maximum height control of 8.5m as required by Clause 4.3 of the Manly LEP 2013 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 for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*

- (c) *to minimise disruption to the following—*
  - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

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 4.3 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 4.3 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis, it is considered that Clause 4.3 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 4.3 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 submitted that:

- The proposal is for the carrying out of alterations and additions to the existing building and which currently has a building height of 10.26m and which exceeds the Council's maximum building height control of 8.5m.

- The non-compliance results from the sites steep topography together with the height of the existing floor levels.
- The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.
- The additional building height over the 8.5m maximum building height is largely a result of the proposed privacy screening to the existing balcony.
- The proposed dwelling alterations and additions are of a design which is in keeping with the character of the locality and will make a positive contribution to the existing streetscape.

The proposal in my opinion will not result in any unreasonable impacts upon either adjoining properties or the streetscape as a result of the non-compliance.

On this basis, it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

**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 in the circumstances of this case for the following reasons:

1. The existing dwelling currently has a height of 10.26m which exceeds the maximum 8.5m building height as required by Clause 4.3 of the LEP.
2. The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.
3. The proposal will not result in any additional negative impacts on the privacy or amenity of the adjoining properties to the north west and south east.
4. The proposal will not result in any view loss impacts upon the adjoining properties.

**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 high quality alterations and additions of the existing dwelling and secondary dwelling in a manner which will make a positive contribution to the built form character of the locality. Furthermore, it is considered that the provision of improved privacy screening will result in increased amenity and privacy to the adjoining properties. 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 following assessment is provided in relation to the proposals relationship to the objectives for the R2 - Low Density Residential zone and which are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

The proposal seeks to provide for alterations and additions to the existing dwelling house and secondary dwelling currently erected upon the subject site. The proposal is, therefore considered to be consistent with this objective.

The proposal is also considered to be consistent with the objectives of Clause 4.3 - Height of Buildings in that:

1. The proposed alterations and additions to the existing dwelling house and secondary dwelling are considered to result in a built form which is compatible with the height and scale of surrounding and nearby development noting that the proposal results in a minor technical (by definition) increase to the existing building height while reducing the existing ridge height.
2. The proposal will not result in any unreasonable visual impacts, disruption of views or loss of privacy.
3. The proposal will not result in any visual impacts when viewed from public places. It is considered that the building alterations and additions will improve the aesthetic appearance of the built environment when viewed from Perrone Avenue.

**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 the high quality of the proposal and the absence of any unreasonable detrimental impacts.

**Conclusion**

It is therefore my opinion based upon the content of this submission that a variation of the height requirements of Clause 4.3 of the Manly LEP 2013 is appropriate in this instance.

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