APPENDIX

CLAUSE 4.6 – MLEP 2013 – HEIGHT OF BUILDINGS

Prepared
June 2024

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

18 BLIGH CRESCENT, SEAFORTH

PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING

VARIATION OF A DEVELOPMENT STANDARD REGARDING COUNCIL'S HEIGHT OF BUILDINGS CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For: Proposed alterations and additions to an existing dwelling
At: 18 Bligh Crescent, Seaforth
Owner: Nik Lee
Applicant: Nik Lee
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This revised written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the Height of Buildings control as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This request accompanies architectural plans prepared by Archisoul Architects in seeking development consent for alterations and additions to an existing dwelling.

The relevant maximum height of the building in this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions and alterations to the existing dwelling include works to enclose an existing open first floor terrace to the south western corner of the principal dwelling, which has an open rafter roof above the terrace. The proposal see the enclosure of the space and continuation of the main roof sheet over the enclosed terrace for weatherproofing.

The new roofing over the currently open terrace will have a maximum height of up to 10.4m above existing ground level which exceeds the height control by 1.9m or 22.3%, as noted in Figure 1.

The overall height of the existing dwelling will be unchanged, with the current ridge level of RL 40.43 being maintained. Whilst there is no change to the existing building height, the new elements to the first floor level to enclose the existing open terrace will create a variation to the building height development standard.

The building height control is directly related to the extent and form of the existing development and the slope of the land to the south towards the lower road verge along Bligh Crescent.

The figure below notes the variation to the maximum height control and demonstrates the height levels for the new roofline based on the existing ground levels as shown on the plans.

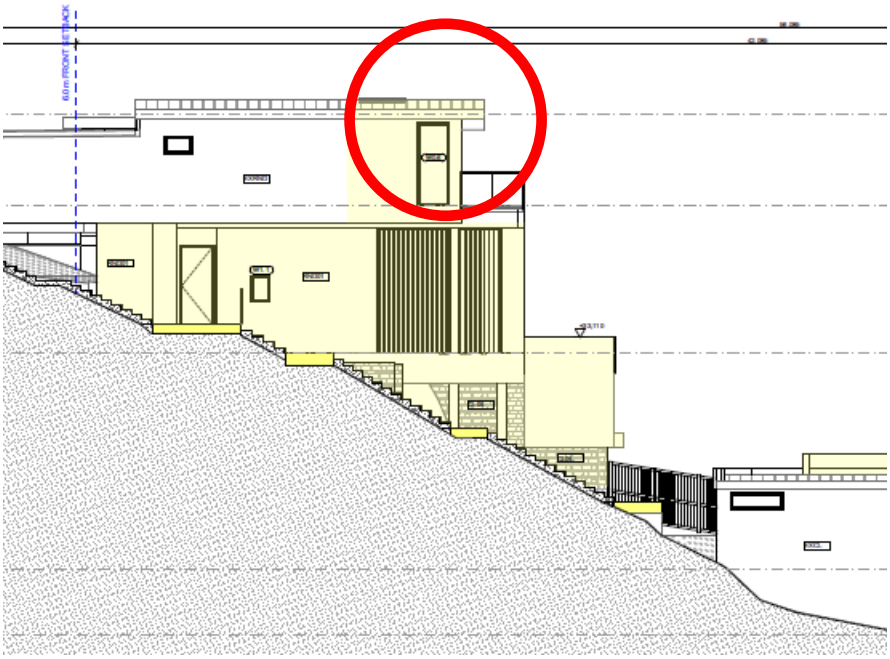


Figure 1: *Building Height Variation noted in red*

In the circumstances of the steep site conditions and the existence of important environmental features, variation of the development standard of 8.5m, while continuing to allow for a dwelling house that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable. The new works are well below the overall height of the development on the site which is to remain at RL 40.43. It is considered that the breach is largely unavoidable due to the considerable slope of the land and that the non-compliance will not result in any unreasonable impacts to any surrounding properties.

1.1 **Manly Local Environmental Plan 2013** ("MLEP")

1.1.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is for the purpose of additions and alterations to the existing dwelling which is a permissible use in the R2 Low Density Residential zone.

Through suitable design and siting, the proposal will result in a low-density residential development which will maintain and enhance the ecological and aesthetic values of the site.

1.1.2 Clause 4.3 – Height of buildings

Clause 4.3 of MLEP sets out the maximum height of a building as follows:

(1) The objectives of this clause are as follows:

(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.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map specifies a maximum building height of 8.5m.

1.1.3 The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines "building height" as:

building height *(or* ***height of building****) means—*

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Is clause 4.3 of MLEP 2013 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"

(b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard as defined in the Environmental Planning and Assessment Act, 1979.

2.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.

- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.

- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

(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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(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,

(caa) clause 5.5.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of MLEP provides:

> *(c) The objectives of this clause are as follows:*
>
> *(d) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
>
> *(e) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]*** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational

provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

> *(f) 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.*

Clause 4.3 (the Height of Buildings control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of MLEP provides:

> *(g) 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:*
>
> *(h) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
>
> *(i) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m in this area of Seaforth. The new works to the primary dwelling house to enclose the existing open terrace to the south western corner of the first floor level of the dwelling and provide a roof cover over the existing open rafter style roof will present a maximum building height of 10.4m which exceeds the height control by 1.9m or 22.3%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of MLEP.

5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m in this area of Seaforth.

5.3 The proposed works enclose the existing open terrace to the south western corner of the first floor level of the dwelling and provide a roof cover over the existing open rafter style roof new balcony on the upper floor of the primary dwelling will provide for a maximum height of 10.4m, which exceeds Council's maximum building height by 1.9m or 22.3% and therefore does not comply with this control.

As previously discussed, a major contributor to the breach of the height control is sloping topography of the site and siting of the existing dwelling house on the sloping topography. The proposal presents only a minor variation to the control, with the majority of the development readily meeting Council's height control, with no change to the existing overall ridge level of RL 40.430.

As discussed in this submission, it is considered that the proposal is reasonable notwithstanding the breach the height control and this will be discussed further within this submission.

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

   (b) there are sufficient environmental planning grounds to justify contravening the development standard

3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(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,

The surrounding area is predominantly characterised by multiple storey development that steps down the slope of the sloping terrain within the locality. There is no change to the upper oof line of the existing dwelling house.

Many of the properties along the Bligh Crescent escarpment and within the immediate vicinity include similar roof forms and building heights variations.

Surrounding the properties display similar multi-level dwellings corresponding the sloping topography and in this regard, the proposal is compatible with the prevailing character of development in the vicinity. As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with existing development in the locality, particularly in relation to height, roof form and character.

This objective is achieved.

(b) to control the bulk and scale of buildings,

The proposed new works to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council [2005] NSWLEC 191*, it is my opinion that "*most observers would not find the proposed building offensive, jarring or unsympathetic*".

Further, this variation is heavily influenced by the steeply sloping topography of the site, and the need to not adversely impact, excavate or remove the existing natural features on the site such as the rock faces or rock outcrops. I

It is also important to note that the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale. The dwelling is sufficiently set back from all boundaries and retains generous landscaped areas.

The minor area of building height non-compliance will have a negligible impact on view sharing from nearby public land or surrounding private property and will not result in any unreasonable amenity impacts on the subject site or adjacent sites.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the fact the proposal follows the sloping topography of the site will suitably distribute the bulk of the new deck area.

The extent of the landscaping area surrounding the development will ensure that the bulk and scale of the proposal is appropriately ameliorated.

This objective is achieved.

(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),***

The proposed dwelling will not see any unreasonable impacts on the existing views enjoyed by neighbouring properties, nor upon the existing views from further up the escarpment due to the higher placement/vantage point of these properties.

Views from the surrounding public spaces are not adversely affected.

(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,

The simplified massing of the development remains generally unchanged. Whilst the application seeks to modify the floor space, the additional area is reasonably distributed over the site to reduces the perception of bulk and scale and minimises impacts upon adjoining properties with regard to solar access.

The application is supported by solar access diagrams which confirm that the proposed development will not result in any unreasonable overshadowing of the adjoining dwelling at No.16 or No. 20 Bligh Crescent, noting that a substantial portion of the glazing associated with primary living rooms and private open spaces are not impacted by the proposal, with most of the sites remaining in direct sunlight for the majority of the day.

(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.

The works will respect the height, scale and form of the existing vegetation, topography and surrounding residential development and the existing development on the site.

The proposal will not require the removal of any significant vegetation and will see the retention of the extensive landscaped area surrounding the dwelling.

Despite the variation to the building height control which occurs as a result of the existing dwelling siting on the sloping land, the proposal is generally consistent with the scale of newer development in the locality.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The requirements of clause 4.4.2 of Manly DCP 2013 "*promote the retention and adaptation of existing buildings rather than their demolition and replacement with new structures".*

Consistent with this objective, the particular element of the development which breaches the height development standard, is constrained by the siting of the existing dwelling on sloping topography which provides a constraint in constructing upper level which is currently above the height standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed new dwelling will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new development is considered to promote good design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height by 1.9m for only a portion of the works to enclose the existing open terrace to the south western corner of the first floor level of the dwelling and provide a roof cover over the existing open rafter style roof will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

The proposal provides for the housing needs of the community by constructing a new dwelling house on the site, with improved residential amenity for the dwelling's occupants.

The proposed dwelling presents a compatible form to newer development in the locality, which is commonly of a 2 to 3 storey scale.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area. The development does not have any unreasonable amenity impacts on its adjoining neighbours.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control whilst maintaining consistency with the objectives of the R2 Low Density Residential Zone.

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

  This does not apply to the subject residential development.

7.4 Has the Council considered the matters in clause 4.6(5) of MLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed new dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

8.0 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

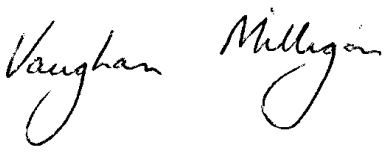
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Accordingly, due to the topography of the site, the variety of built forms along Bligh Crescent, and the similarity of the bulk and scale to the existing dwelling house, the non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The proposals design with high quality external finishes and open style balcony areas, provides a more "stepped" look when viewed from neighbouring properties with extensive landscaping to be incorporated into the site to soften and filter the built form.

This written request to vary to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



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