

# **CLAUSE 4.6 EXCEPTION REQUEST**

**LEP cl 4.4 Floor Space  
Ratio**

**55 Quinton Road,  
Manly**

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# 1 Clause 4.6 exception for Floor Space Ratio

## 1.1 Overview

Clause 4.6 of the Manly LEP 2013 (LEP) provides a mechanism for an exception to a development standard.

The proposal involves an exception to LEP Clause 4.4 'Floor space ratio' (FSR), which is a development standard, and an exception is sought.

The FSR applicable to the site is 0.6 to 1, resulting in a gross floor area (GFA) for the site of 111.6m<sup>2</sup>. The existing FSR is: 0.49 to 1 (a modest 78m<sup>2</sup> of GFA). The proposed GFA is 147.38m<sup>2</sup> translating to an FSR is: 0.79 to 1, which exceeds the standard by 35.78m<sup>2</sup> /32%.

Drawing 603 of the architectural plan set provides a calculation of proposed gross floor area and floor space ratio for the property.

## 1.2 Site and location description

The site is located at 55 Quinton Road, Manly and legally described as Lot 34A in Deposited Plan 442217. The site has an area of 186m<sup>2</sup>.

The site is rectangular in shape with an eastern frontage of 6.065m to Quinton Road and a depth of 21.665m. It has an east to west orientation and forms the northern half of 2 semi-detached dwellings.

The home is a modest single storey, brick and tile, semi-detached dwelling containing 2 bedrooms, paved paths, and gardens and no car parking.

There are views generally in an easterly direction towards the coast from the elevated hill side location.

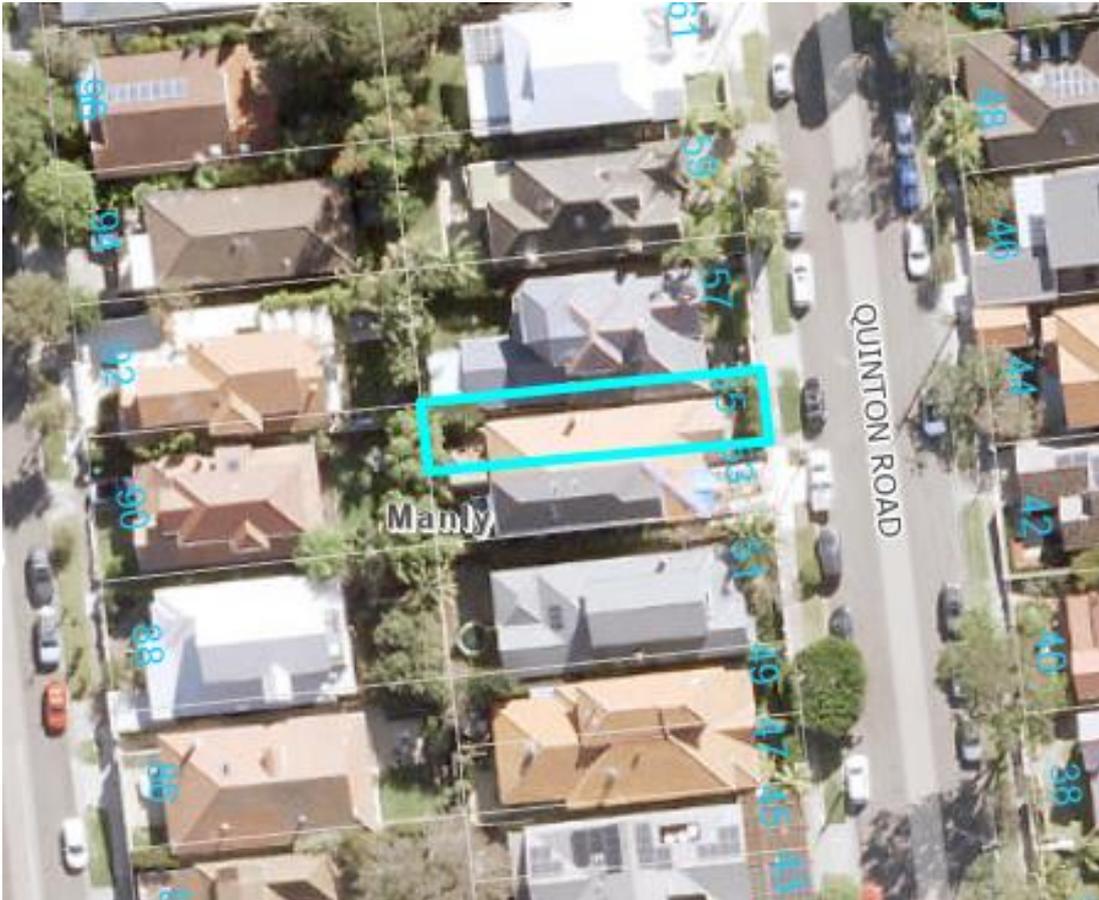
The location is built-up containing a diverse mix of residential housing types including, for example, manor house, semi-detached dwelling, duplexes, residential flat buildings, intermixed with dwelling houses.

There is a diverse mix of property frontages to the street with garages, carports, and car parking areas with nil or minimal street setbacks being dominant.

No significant change to the character is foreshadowed by the planning controls. Therefore, the existing character is a relevant consideration in guiding the assessment of the proposed built form.

The figures on the following pages depict the character of the property and its existing development.





**Figure 2 – Alignment, orientation and spatial layout of the subject site and adjoining properties (courtesy Northern Beaches Council Maps)**



**Figure 3 – the existing development, within the streetscape, as viewed from Quinton Road. The subject site is marked (source: Streetview)**



**Figure 4 - the adjoining developments to the south on Quinton Road. The subject site is marked.**

## 2 Key statutory considerations

### 2.1.1 Objectives of clause 4.6

The objectives of clause 4.6 are as follows:

- (1) (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (1) (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

### 2.1.2 Objectives of Clause 4.4 Floor space ratio

The objectives of Clause 4.4 Floor space ratio 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.*

### 2.1.3 Key definitions

**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.*

### 3 Assessment

Within the spirit of the objectives of clause 4.6, the matters in support of the proposed exception are demonstrated by the characteristics of the proposal and circumstances of the case as set out below.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

#### 3.1 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the FSR standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

1<sup>st</sup> *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.*

Despite the FSR exception, the proposal satisfies the objectives of the FSR standard for the reasons described below.

**Objective (a) –**

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

*'Desired future streetscape character'* is a term which is undefined within the LEP and DCP. Therefore, guidance may be taken from the range of environmental planning instruments and DCP provisions applicable to the land. It is also observed that Quinton Road, near the subject site, has no distinguishing or unique streetscape topographic, or landscape features to warrant special recognition or conservation in terms of the building form on the subject site.

In terms of compatibility with desired future character, three recent court matters have considered the term ‘desired future character’<sup>1</sup>. Guidance is therefore taken from the applicable planning controls and these cases.

In the SJD appeal, Justice Preston found that the local environmental plan and other approved development that contravenes the development standard are both relevant to determining desired future character.

In Big Property, Commissioner O’Neill, referencing the SJD cases, found that development standards for building envelopes are frequently generic standards which do not account for existing and approved development or the nuances of an individual site. The Commissioner stated that:

*“The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality” [at 44]’.*

Furthermore, Commissioner O’Neill in Big Property stated at [57]:

*“The desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site (Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [54]). The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine*

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<sup>1</sup> Big Property Pty Ltd v Randwick City Council [2021] (Big Property), HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG), SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 and Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD)

*building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60]).*

Based on the above, it is observed that:

- Development standards (FSR in this case) for building envelopes are frequently generic standards which do not account for existing and approved development and the circumstances of an individual site.
- cl4.6 of the LEP is as much a part of LEP as the clauses with development standards. In SJD DB2 at [62]-[63] it states, *'The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality'*.
- Development standards that determine building envelopes can only contribute to shaping the character of the locality and the existing character should also be considered.
- The FSR standard in the subject matter does not account for existing and approved development within the site's visual catchment where there are various examples of residential developments that are more than 0.6:1 in FSR the development at 53 Quinton Road being the principal example of scale, and visual prominence.
- The bulk, form and diverse mix of housing within the local area are relevant in considering the exception to the FSR standard.

No significant change to the character is foreshadowed by the planning controls. Therefore, the existing character is a relevant consideration in guiding the assessment of the proposed built form.

The local area is built-up containing a diverse mix of residential housing types including, for example, manor house, semi-detached dwelling, duplexes, residential flat buildings, intermixed with dwelling houses.

53 Quinton Road is the southern half of the pair of semi-detached dwellings. It has been developed with a first-floor addition. There is no remaining symmetry associated with the pair of semi-detached dwellings. The property's exhibit no distinctive character features that are worthy of retention or replication. The proposed first floor addition will be compatible with scale, form, bulk (GFA) setbacks, and configuration of the adjoining 'semi' at 53 Quinton Road, whilst presenting appropriately to the streetscape and adjoining land.

The site has a small visual catchment, due to the narrow width of the lot (6.1m), approx. 5m width of the dwelling, and the built-up character of development, including the 2-storey character of 53 Quinton Road.

The adjacent semi-detached dwelling visually obscures the property from areas to the south and is already developed with an FSR of 0.76 to 1 (source: Mod2018/0396).

The proposed built form:

- is compliant with the building height development standard and the DCP control limiting the number of storeys to 2. Compliance with these planning controls contribute to the built form being compatible with the development in the local area.
- provides front, side, and rear setbacks are compatible with the adjacent semi-detached dwelling, property to the north, and the streetscape.
- provides a rear setback compatible with adjacent semi-detached dwelling, maintaining appropriate solar access and visual presentation.

- provides compatibility with the approved height of the adjacent semi-detached dwelling

Noting the mixed residential character and variety of housing forms within the local area, the bulk and scale of the proposed development resulting from the FSR exception will be consistent with the existing streetscape character. For these reasons the proposal is assessed as being consistent with objective (a).

**Objective (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,**

- The site is distanced from heritage items, conservation areas, public open space, foreshore, and bushland areas.
- The site is distanced from important trees or landscaped areas.
- The proposal will not disrupt views from public spaces to any landmark or sensitive residential development.
- The proposal will not obscure any important landscape and townscape features.

For these reasons the proposal is assessed as being consistent with objective (b).

**Objective (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,**

There are no public spaces adjoining the site that will be inappropriately impacted by the proposed FSR exception.

Quinton Road has no distinguishing or unique streetscape or landscape features to warrant special recognition, replication, or conservation in terms of the visual relationship with the subject site and the proposed development. The streetscape is of mixed residential housing character with no consistency of architectural styles forms or housing types.

The proposed development will maintain an appropriate visual relationship with the existing built form and landscape character within the local area.

The proposal maintains the pattern of development in terms of setbacks and will be compatible with the bulk and form of nearby development.

The proposed first floor addition will maintain the rhythm and pattern of spaces between buildings when viewed from the street. The narrow 5m (approx.) width of the proposed first floor addition will result in a recessive building form that will not be visually intrusive and present appropriately to adjoining land.

For these reasons the proposal is assessed as being consistent with objective (c).

**Objective (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,**

The proposal is assessed as being consistent with objective (d) noting that:

**Solar access**

Shadow diagrams showing the existing and proposed shadows accompany and support the proposal. The following key aspects are noted.

The site and the adjoining properties have an east / west orientation to Quinton Road. As a result, shadow diagrams demonstrate that shade will be relatively evenly shared between the rear yard (morning) and front yard (afternoon) of the adjacent property at 53 Quinton Road. This reflects the existing development & shading pattern for properties along the western side of Quinton Road, and provides a relatively even distribution of shade, consistent with the development pattern along the street.

In accordance with the DCP, the sunlight available to the private open space of the adjoining dwelling will not be impacted by more than 3 hours between 9am and 3pm on 22 June.

It is assessed that, whilst shade onto the adjoining property will be moderately increased above the current levels, the extent of the increase is within reasonable limits.

### **View sharing**

No significant view corridors or vantage points are identified from the site/ location. Outlooks to the north (district) and east (coastal/beach) are generally available from the hillside location.

The proposed additions, are not anticipated to unreasonably impede views from surrounding residential properties.

The proposed development will provide views from the property (proposed upper level and roof terrace) that don't currently exist, thereby increasing the extent of views available from the location.

Access has not been gained to nearby properties in assessing this aspect; this may be undertaken when the DA is publicly exhibited to neighbouring properties which may be undertaken during the assessment of the DA.

### **Privacy**

Privacy has been considered in the proposed design and satisfies the DCP's objectives. The following aspects are noted:

- Appropriate side building setbacks are provided by the proposed additions noting the proposed first floor level setbacks align with the lower building level.
- No first-floor level balconies or terraces are proposed adjacent to the principal living areas of the dwelling,
- The proposed north facing windows at the first-floor level are associated with bedrooms and bathrooms rather than living rooms. They are proposed to achieve improved solar amenity to the dwelling.
- The proposed north facing windows are appropriately separated from adjoining dwelling house, and sensitive living rooms / open spaces within it, which are positioned at the rear (west) and are away from the southern side of the adjoining dwelling house satisfying privacy.

The proposed roof terrace appropriately addresses privacy, noting:

- The terrace will principally gain an outlook to the east and northeast whilst optimising solar access from the north. The adjoining neighbour's principal open space is to the west / rear of the property.
- Not being at the same level or directly connected to the principal living areas of the dwelling, the proposed terrace will gain occasional use. It is not proposed as the principle private open space for the dwelling.
- Privacy is addressed by the offset location of the roof terrace compared to the adjacent open space area at the rear of 57 Quinton Road, Furthermore, the position of the terrace within the middle of the dwelling footprint. The central location of the terrace on the site avoids potential downward sightlines into the private open space of 57 Quinton Road.
- Privacy is addressed by the significant separation to residential buildings to the east (on the opposite side of Quinton Road) and south, obscured by roof of 53 Quinton Road.

For these reasons, the proposal is assessed as being consistent with objective (d).

### **3.2 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard**

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

#### **Undersized allotment**

The site is an undersized allotment based on clause 4.1 of the LEP and 4.1.3.1 of the DCP. The 186m<sup>2</sup> site area is 114 m<sup>2</sup> / 38% under the minimum lot size for the area, compromising the ability to achieve compliance with the (numerical aspect) of the development standard.

In relation to undersized allotments the Manly DCP states:

*“Note: 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. See LEP clause 4.6(4)(a).*

*The undersized nature of a lot is a matter that Council may consider in determining whether ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ and ‘there is sufficient environment planning grounds to justify contravening the development standard’ under LEP clause 4.6(3)”.*

#### **Modest existing and proposed GFA**

The existing dwelling house contains a modest 78m<sup>2</sup> of GFA comprising a small dwelling. The proposed GFA is 147.38m<sup>2</sup> and remains a modest scale by contemporary standards.

The changes proposed to the existing gross floor area will result in an improved residential amenity for the building occupants, with additional internal spaces to better accommodate contemporary living needs.

### **Existing, older dwelling**

The semi-detached dwelling is estimated to have been constructed in the 1930's or 1940's prior to the introduction of FSR standard which has been in place since approx. 1988. This limits the potential to achieve compliance with the standard.

### **Compatible with adjoining semi-detached dwelling**

The proposed development provides a floor space ratio that is compatible with the property at 53 Quinton Road, the adjacent semi-detached dwelling. It was extended to accommodate a first-floor addition in approximately 2018 via DA169/2017 and Mod 2018/0396 and is reported to have an approved FSR of 0.76 to 1.

### **Compatible with the bulk, scale, form, and setback pattern**

The proposed building form follows the front, rear, and side setbacks that are established on the existing and adjacent property at 53 Quinton Road. The proposed development will be compatible with the bulk, scale, form, and setback pattern of development established on the adjacent property. The proposed FSR is therefore compatible with the established development character despite it exceeding the FSR development standard.

### **No inappropriate amenity impacts**

The proposal will not result in any inappropriate environmental impacts on the adjoining land in relation to solar access, privacy, view sharing, and visual intrusion.

### **3.2.1 The proposal satisfies the relevant objectives of the Environmental Planning and Assessment Act**

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

*(c) to promote the orderly and economic use and development of land; and*

*(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.*

**In response to (c)**, the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that is desired by the prevailing planning provisions because it will facilitate additional accommodation, with high residential amenity, in a highly desirable location, and meet the contemporary living needs of the dwelling occupants.

**In response to (g)**, the proposal results in a residential development that will promote good design and amenity of the built environment.

The built form outcome has been developed through detailed site, context, privacy, view sharing and shadow analysis to ensure an appropriate contextual and streetscape fit.

The proposed development is designed to reflect the siting and setbacks of existing development and be compatible with the surrounding built form.

The proposed first floor addition is successful in minimising its impacts. It incorporates a narrow volume with compatible setbacks. It will be compatible with scale, form, setbacks, and configuration of the adjoining 'semi' at 53 Quinton Road, presenting appropriately to the streetscape and adjoining land.

The proposed building addition, inclusive of its FSR exception will maintain the dwelling house's streetscape alignment, and in doing so maintain an appropriate streetscape presentation.

### **3.3 Secretary's considerations**

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

## 4 Conclusion

The variation proposed to the FSR development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- the proposed FSR exception will result in a contextually responsive development.
- there are sufficient site-specific circumstances and environmental planning grounds to justify the exception to the development standard.
- the proposal is consistent with the objectives of the FSR standard and will result in an appropriate amenity outcome to neighbouring land.
- compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6 and should be granted development consent.