

**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
ALTERATIONS AND ADDITIONS TO EXISTING (INCOMPLETE) BUILDING
95 GURNEY CRESCENT SEAFORTH
DECEMBER 2019**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Manly Local Environmental Plan 2013 for Northern Beaches Council.

The objectives of Clause 4.6 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.

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the accompanying Development Application drawings prepared by Mark Hurcum Design Practice and Statement of Environmental Effects.

The unique situation of this project is that the proposed DA is for an extension to an unfinished building shell undertaken by another applicant and architect, and this has been “under construction” for around 20 years. The original approval for the current building was approved in 1999. A final S.96 application for a revised scheme was approved 2011.

The proposal is to add another level on the existing concrete roof as well as extending out the approved carport and enclosing it as a garage and an office. This work exceeds the height limit.

1.0 Zoning of the Land

The subject site is zoned E3 “Environmental management”

2.0 Objectives of the Zone

The objectives of zone are as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of 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.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

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3.0 Standard to be Varied

The standard to be varied is Part 4, Clause 4.3 of LEP2013, which sets the maximum building height for a building as shown on the Building Height Map. The maximum building height for 95 Gurney Crescent is 8.5 metres.

4.0 Objectives Pertaining to Standard to be Varied

The objectives that relate to the building height standard is found in LEP 2013 and referenced in DCP paragraph 4.1.2.

“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.*

5.0 Extent of Non Conformity to the Standard

To ascertain the level of height compliance we have used the estimated existing ground level contours that were supplied at the time of the original (approved) DA and subsequent approved S96. This approval included a large extent of excavation however the pre-existing ground levels should be used to determine the height as the sections of building that are constructed below the level of the retaining wall at any one point are essentially “invisible”.

The existing building has a maximum building height that does not conform with the building height control. The proposal includes for development of each level, that in effect adds to the height of the building where the additions are above the existing formed structure.

At the most extreme point, the highest point of building above the existing ground level would be 12.4m, which is 3.9m above the 8.5m height plan at that point. This can be seen in the attached diagram.

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6.0 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposal does not comply with the building height control, however this non-compliance is justifiable and strict compliance can be regarded as unreasonable or unnecessary for the following reasons:

6.1 Existing surrounding conditions and similarly approved examples.

The main reason for why strict compliance can be regarded as unreasonable or unnecessary is that the proposal is to be constructed directly beside a similar scale (and non-complying) building to the North (No.97). No.97 is a very rectilinear boxy development that includes an enclosed garage at the top level and then 4 stories below this. Like No.95, the fall in the natural ground level means that No.97 definitely does not comply with the height control and they submitted a Clause 4.6 (SEPP1) with their DA, which was approved. The proposal at No.95 is actually more articulated, stepped and less intrusive than No.97.

Two doors down No.91 Gurney is currently under construction and it too is well over the height limit and they also submitted a Clause 4.6 that was approved.

In this instance, therefore, applying strict compliance to our proposal would not provide any benefit as this site can already be read as existing between these two non-complying envelopes.

It is noted that there are a great many developments in Gurney crescent that have been approved over the last number of years that have almost all of them has Height noncompliance. Therefore is it unreasonable by comparison to require strict compliance of the proposal based on bulk and scape when the proposal matches approved neighbouring developments.

6.2 Lack of impact to surrounding properties.

As noted above, this proposal utilises an existing unfinished shell from a previously approved DA. Only parts of the proposed DA (namely the Garage, Office, Master bedroom and lift/stair) is an extension of the previously approved building envelope. It is noted therefore that the impact difference of these new areas should be how to assess the level of impact on neighbouring properties.

The major possible impact is overshadowing and over looking to the property to the South (No.93), however their house is quite a different formation to any of the surrounding neighbours. They have a roof carport at the street, raised on very tall pillars with a rocky garden bed and terraced lawns underneath, and their main house is disconnected and much further down the block. As such, there is a much lesser impact for this neighbour than if their main house had been directly adjacent to the subject building.

An analysis of the shadow impact shows that the majority of shadow impact to their house, which only occurs between 9am and 12pm, is from the existing approved slab structures. The new additions do add further shadow, but as most of this additional shadow falls on their roof it doesn't create an additional impact resulting from the non-complying portion.

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Therefore is it unreasonable to require strict compliance of the proposal based on the fact that there is very little demonstrable impact to surrounding neighbours.

6.3 Lack of properties to the rear (no view loss)

It is an unusual and unique feature of this part of Gurney Crescent that there are no properties on the other side of the road. As such, there is no view loss at all associated with the non-complying height of the proposal. Therefore is it unnecessary to require strict compliance of the proposal based on view loss.

6.4 Development of previously approved design (not by Applicant).

The current Applicant did not design or construct the previously approved scheme that was left unfinished. That design was essentially a 5 storey but only 2 bedroom house. It made no sense and was incredibly vague in terms of where external areas stopped and internal areas began. The evidence of the history of the project shows that it is unlikely that the previous developer was ever going to leave it as per the approval and they were regularly being stopped due to construction of unapproved works. Our Client wishes to develop the unworkable existing approval into a home much more suited to the site as well as suited to their lifestyle. Therefore is it unreasonable to require strict compliance of the proposal considering it has to work with the structure of what has already been constructed.

6.5 Visibility of non-compliance

From the street, the building appears as a single storey, dropping down below the street level. At the street side, all the visible works comply with the height limit. From the water, the majority of the building remains as per the approval and the non-complying sections are stepped back – although they will be visible from the water. However, from this position, the top level is still stepped back further than the approved property to the North (No.97) as well as the new building works to No.91. It can be considered as unreasonable to enforce the height compliance if the proposal sits between to more prominent but approved recent developments.

The main area that the non-compliance will be visible is from No. 93 directly to the south, however the design is such that the office is stepped back away from this side in order to reduce the building bulk from that position.

6.6 Despite the non-compliance, the proposal achieves all objectives of the development standard.

As covered below, despite the non compliance with the standard the Aims and Objectives are still met.

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7.0 Compliance with the Objectives Pertaining to Standard to be Varied

7.1 *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 nature of this topography is that it steps down the site. While the previous answer of the building on this site by the original owner/applicant was to dig a big hole, it is more appropriate that the development should step as the site falls away, which this proposal does. This is at odds, it must be acknowledged, to the proposal for No.97 that was approved, which is a directly vertical 5-storey building that also does not comply to the height limit.

7.2 *To control the bulk and scale of buildings,*

It is acknowledged that the Height limit does effectively control bulk and scale. However, if this was the only non-complying building being proposed then the argument would be a lot stronger that the development is inappropriate. But as noted above, the building sits between two larger, taller and equally non-complying buildings (No. 97 and No.91), plus the perception from the street is only of the single storey complying section.

7.3 *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),*

As noted, there are no residential properties directly behind the subject site and as such there are not view loss impacts. It is acknowledged that the approved carport was open whereas the proposed DA includes an enclosed entry and garage, therefore blocking views to the foreshore/harbour from the street, that this is the same situation as next door who have an enclosed garage – plus this is a dead-end street with no pedestrian walkway beyond so there is not general loss of public view.

7.4 *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,*

In undertaking the proposal the amount of solar impact to the neighbour to the South was carefully assessed. Firstly, it should be acknowledged that the relative positions of the buildings to each other plays an important role in determining the level of impact. The property to the South (No.93) is an undeveloped residence with a carport on tall pillars at the street then a big gap between this and the house, which is much lower down and much further forward than the subject site existing residence.

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It also needs to be acknowledged that there is already a substantial development as approved and partially constructed on No. 95 and the level of shadow impact needs to be judged as what is additional to the approved and constructed building.

On close analysis of the existing and the proposed shadow impact to No.93 there is no real change to the shadow impact as the new shadow of the additional area (including the non-complying portion) falls on the roof of the neighbour or the zone in between the carport and house. No.93 still achieves the same sunlight amenity in the afternoon to their living areas and this is unchanged.

7.5 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 proposal is constructed off the original approved and half-constructed building. As such the deep excavation is not part of this application and both existing vegetation and topography have already been severely impacted.

8.0 Conclusion

It is submitted that a variation to the maximum height control within Manly Council LEP2013 is appropriate for this project as the non-conformity does not add any specific impact to adjoining or nearby properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

As demonstrated above, strict compliance with this standard is inappropriate to this Development Application.

Approval should not therefore be withheld due to the non-compliance of the development standard.