



clause 4.6 variation request

alterations and additions to
dwelling and adjustment of
strata boundaries

1/7 Boyle Street, Balgowlah

INTRODUCTION

This clause 4.6 variation request has been prepared to support an application for alterations and additions to dwelling and adjustment of strata boundaries at 1/7 Boyle Street, Balgowlah.

The proposal

The proposal involves expanding the lower ground floor to create an additional living space, installing a staircase for internal vertical access between ground and lower ground levels, and the construction of a rear balcony over vehicle circulation area and front terrace. Corresponding adjustments to the strata lot boundaries are also proposed.

Zone and objectives

The site is within Zone R1 General Residential under *Manly Local Environmental Plan 2013* (MLEP).

The objectives for development in Zone R1 General Residential are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development aligns with the relevant objectives for development in Zone R1 General Residential given that proposed works will improve the functionality and liveability of the existing dwelling.

The variation

The proposal does not comply with clause 4.4 *floor space ratio* which states that floor space ratio (FSR) for a building on the site must not exceed 0.5:1. Clause 4.4 is not expressly excluded from the operation of clause 4.6.

The site area is 460sqm therefore the maximum permitted gross floor area (GFA) at the site is 230sqm (0.5:1).

The existing building exceeds maximum permitted FSR with a GFA of 242.1sqm (0.53:1). The development involves expansion of the lower ground floor area which results in a total GFA of 248sqm (0.54:1).

The proposal introduces an additional 5.9sqm of floorspace meaning the building post-development will exceed permitted GFA by 18sqm. This equates to a percentage variation of 7.8%.

A calculation sheet is provided with the architectural drawings to identify where additional floorspace is situated and to illustrate which areas have been accounted for in the GFA calculation.

Purpose of the request

The purpose of this document is to satisfy the conditions of clause 4.6 of MLEP which requires the submission of a written request from the applicant justifying contravention of the development standard.

This request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

ADDRESSING CLAUSE 4.6

This section of the written request addresses the key elements of clause 4.6 in turn.

Compliance is unreasonable or unnecessary

Here we seek to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In doing so, we invoke one of the “tests” established by the NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council [2015] NSWLEC 90*, which suggests that if the objectives of the development standard are achieved notwithstanding non-compliance with the standard, strict compliance with that standard may be unreasonable or unnecessary.

The objectives of clause 4.4 and consideration of each in the context of the proposal is provided at Table 1.

Table 1 | Objectives of the development standard

Objective	Comment
(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character	<p>The proposed expansion of the lower ground level will not project beyond the established building envelope and is partly subterranean.</p> <p>The apparent bulk and scale of the building post-development will be comparable to the apparent bulk and scale of the existing building.</p> <p>Although non-conforming, the proposed expanded floor space is concealed and makes no tangible contribution to perceived bulk and scale.</p> <p>The building will continue to be of a bulk and scale that is consistent with existing and desired streetscape character.</p>
(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	<p>For the reasons described above, the building post-development will have a comparable bulk and scale to that of the existing building.</p> <p>The proposed lower ground level expansion will not obscure landscape or townscape features as it will be contained within the existing building envelope and partly subterranean and therefore largely concealed from view.</p>
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area	<p>The proposed lower ground level expansion is contained within the existing building envelope and is partially subterranean.</p>

Objective	Comment
	<p>The additional GFA is not readily perceived from the street and therefore does not impinge on the visual relationship between the building and existing character of the area.</p> <p>The additional GFA does not impact landscape of the area.</p>
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain	For the reasons described above, namely that the proposed additional GFA is contained within the established building envelope and will not present as a prominent visual element, it is considered that the development will have no adverse impact on the use or enjoyment of adjoining land.
(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	n/a

As detailed above, the objectives of clause 4.4 are achieved notwithstanding non-compliance because the proposed additional GFA will make limited perceptible change to building volume and will have no adverse impact on streetscape character or spatial relationship between buildings.

On this basis, strict compliance with clause 4.4 is unreasonable and unnecessary in the circumstances of the case.

Sufficient environmental planning grounds

Here we explain that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds described below are specific to the site and to the development:

- The extent of variation is numerically minor at 18sqm which equates to a percentage variation of 7.8%. The marginal extent of variation is not in and of itself adequate justification however in the circumstances of the case, it is certainly relevant to council's consideration of the variation request.
- The existing building has a GFA of 242.1sqm and is therefore already non-complaint. The net increase in GFA proposed by this development application is 5.9sqm. Again, the small net increase in GFA is not adequate justification in isolation, though it is relevant to council's consideration of the variation request.
- The site falls away from the street and, in combination with established floor levels, topography creates an opportunity whereby existing subfloor storage

space can be converted and utilised as functional space without any significant change to streetscape appearance or apparent building volume. The proposed additional GFA is effectively concealed from view by the existing concrete patio, front fencing and established planting.

- The additional GFA will be contained within the parameters of the established building envelope. Though the lower ground floor walls will be reconfigured, they will ultimately align with the existing external walls and the concrete patio associated with the ground floor living room. Apparent building volume and spatial relationship between the dwelling and neighbouring buildings will be unchanged.
- The proposal seeks to optimise presently underutilised space within the building by converting storage space and subfloor to a secondary living space which will markedly improve the functionality of the dwelling. The proposal improves existing housing stock.

We have explained that there are sufficient environmental planning grounds to justify the proposed contravention of clause 4.4. Site conditions allow for expansion of the lower ground floor without any adverse impacts on building volume or the spatial relationship between buildings.

The development is in the public interest

This variation request demonstrates that the proposal aligns with the objectives for Zone R1 and achieves the objectives for clause 4.4. notwithstanding non-compliance with the development standard.

The development will greatly enhance the functionality and liveability of the existing dwelling by optimising underutilised subfloor storage space. The development has been designed to minimise impacts on neighbours and integrate with the streetscape. The proposal aligns with the public interest.

SUMMARY

This clause 4.6 variation request has been prepared to support an application for alterations and additions to dwelling and adjustment of strata boundaries at 1/7 Boyle Street, Balgowlah.

This written request seeks to vary clause 4.4 of MLEP. The development involves expansion of the lower ground floor area which results in a total GFA of 248sqm (0.54:1). The building post-development exceeds permitted GFA by 18sqm which equates to a percentage variation of 7.8%.

We have demonstrated that strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the case given the development achieves the objectives of the standard notwithstanding non-compliance.

Further, we have explained that there are sufficient environmental planning grounds to justify contravening the development standard, namely that site conditions allow for expansion of the lower ground floor without any meaningful change to apparent building volume or the spatial relationship between buildings.

Finally, this written request demonstrates that the development is in the public interest as it is consistent with the objectives of the standard and the objectives of Zone R1.