

6/09/2024

General Manager
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Via Email

Dear Sir/Madam

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Clause 4.6 Request to vary the Maximum FSR Control Clause 4.4 of Manly LEP 2013 – Alterations & Additions at 91 Cutler Road Clontarf

Introduction

This 4.6 variation is to be read in conjunction with the submitted development proposal for the proposed alterations and additions to the existing dwelling on a lot of 365.5 m² which has a current GFA of 354.9 m² and a FSR of 0.97:1. The proposed works result in a further 27.3m² and total gross floor area of 382.2 sqm resulting in a Floor Space Ratio of 1.05:1.

This 4.6 variation seeks to vary the floor space ratio density provisions contained within the Manly LEP 2013 which contains a floor space ratio standard of 0.4:1 for the subject site in accordance with Council's LEP mapping.

This submission forms a request to grant an exception to the development standard Floor Space Ratio in Clause 4.4 of the MLEP 2013 under clause 4.6 "Exceptions to development standards" of the MLEP 2013. This application breaks down the considerations, justifications and demonstrations required by clause 4.6 in the following sections.

4.6 Exceptions to development standards

(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) 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.*

(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(5) *Repealed*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* **Not Applicable**

(7) *Repealed*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following:* **Not Applicable**

When considering a variation to the Floorspace standard the objectives of the zone and whether the proposal still meets these objectives must also be considered.

Zone C3 Environmental Management

1 Objectives of zone

- *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.*

Court Principles and Guidance around Application of 4.6 Exceptions

This variation request has been composed with attention to the recent revisions to Clause 4.6 which included:

- retain the existing 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests in clause 4.6(3)
- require the applicant and consent authority to consider the same tests, retained in clause 4.6(3)
- require the consent authority to be satisfied that the matters in clause 4.6(3) have been demonstrated
- remove the need for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone – this will avoid duplication of tests and matters for consideration covered by other relevant statutory provisions
- remove the Planning Secretary's concurrence requirements, replacing them with a new monitoring and reporting framework.

This variation also tests the proposal against one of the five methods outlined in the LEC case *Wehbe V Pittwater Council* (2007)

Development Standard to be Varied – Floor Space Ratio

This clause 4.6 variation request relates to a departure from a numerical standard set out under clause 4.4 of the MLEP 2013 in relation to the specified floor space ratio for the site with an area of 365.5 sqm total gross floor area of 382.2 sqm resulting in a Floor Space Ratio of 1.05:1

This development standard relates to the density of the development, clause 4.4 of the MLEP 2013 fall within a scope of a “development standard” as defined under section 4 of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act).

Clauses 4.4 of the MLEP 2013 contain the following objectives & provisions which apply to the proposal:

4.4 Floor space ratio

Note: Strike through Not Applicable

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

(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 Zone E1 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) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

Floor Space Statistics

Under clause 4.4 the site has a prescribed maximum floor space ratio of **0.4:1 (146.2 m2)**

The existing FSR on site is 0.97:1 (354.9 m2)

The proposed development results in the following resultant floor space:

- The proposed floor space ratio is 1.05:1– 382.2 m2.
- The additional floor area proposed is 27.3 m2.
- This represents a GFA of 236 m2 over the maximum allowed which represents a 62 % variation to the floor space ratio standard.

Assessment of the Provisions of Clause 4.6 Exceptions to development standards

Clause 4.6 of the MLEP 2013 allows for flexibility to be applied to development standards where objectives can be obtained notwithstanding the variation. The mechanics of the clause, the objectives of the floor space ratio standard and a response are outlined below.

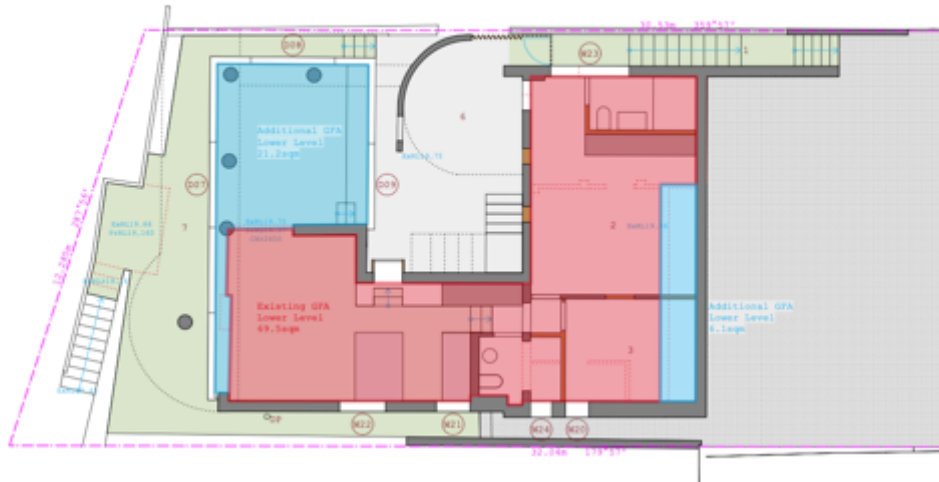


Figure 1: Proposed Lower Ground Floor Plan noting majority of additional floorspace involves the enclosure of an existing south facing and exposed external recreation area.



Figure 2: External exposed bunker type area that has no existing function



Figure 3 Existing stairs from living area down to lower ground floor noting existing room to the east.



Figure 4 View of the dwelling from the reserve. Note: Block wall to be cut down and view will be softer with glazed elements proposed.


Clause 4.6.3 (a)(b) - Unreasonable or Unnecessary / Environmental Planning Grounds

Commentary provided below to address the requirements of this clause.

Table 1 Request to vary development standard 4.4 Floor Space Ratio

Objective	Comment
<p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,</p> <p>NOTE: In this regard, Wehbe outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable by establishing:</p> <p>i) compliance with the underlying objectives of the standard being breached notwithstanding the numerical non-compliance</p> <p>ii) that the objectives of the standard are not relevant to the proposal</p> <p>iii) requiring compliance with the standard may thwart the achievement of the objectives of that standard</p> <p>iv) that the standard has been virtually abandoned by the Council or</p> <p>v) the zoning of the land is not appropriate for the site and therefore the standard is not appropriate.</p>	<p>This justification relies on Wehbe point i) and ii) that:</p> <p>i) Notwithstanding the variation, the proposal still achieves the relevant objectives of the C3 Environmental Management Zone and the objectives of the Floorspace standard, and</p> <p>Zone objectives are met in that:</p> <ul style="list-style-type: none"> The proposal does not threaten any ecological areas and does not reduce soft landscape area on the site or remove any vegetation. The proposal is limited to works in the undercroft area of the existing built form and will have a positive effect from an aesthetic viewpoint by the introduction of glazed elements that will soften the façade when reflecting the canopy and waterfront view as the upper levels currently do (Refer to Figure 4). The lowering of floor level and resultant lowering of heavy blockwork retaining structure and balustrade will reduce the visual impact of the concrete interface and soften the lower floor with the introduction of glazing elements which will positively impact the natural and scenic qualities of the foreshore. The proposal will reduce current visual impact of hard surfaces as viewed from the waterway. The existing dwelling's height will not change because of the proposal; however, the retaining structure and balustrade blockwork will be lowered which will reduce visual impact and improve the relationship between the dwelling, the bushland reserve and the waterway. <p>The floorspace objectives are met by the proposal in that:</p> <ul style="list-style-type: none"> The bulk and scale of the development is improved by the proposal noting that the proposed glazed elements will soften the lower level façade and reflect tree canopy and natural views rather than the current dark understorey of the built form. The reduction in height of the retaining structure and blockwork balustrade will reduce bulk as viewed from the reserve and waterway. The floorspace variation does not result in an increase in built upon area noting that the

Objective	Comment
	<p>space is contained within an existing unusable undercroft area.</p> <ul style="list-style-type: none"> • The scale of the proposal and the resultant dwelling will be the same as it is currently notwithstanding the conversion of outside space to a multi-functional indoor / outdoor area with stacker doors. The resultant form will still be in keeping with and complementary to neighbouring properties and the broader streetscape and foreshore area. • No negative environmental impacts will occur to the neighbouring reserve and waterfront, in fact there will be a positive social impact with better passive surveillance across the area from the lower ground floor and terrace with reduced balustrade. • The proposed multi-functional indoor / outdoor lower ground floor space provides options to the residents to utilise the space whatever the weather or noise conditions. The resultant glazing elements and reduction in retaining and blockwork at the boundary assist in achieving the aims of the Manly LEP which is to promote a high standard of urban design, foster environmental and social welfare while appropriately responding to environmental character and amenity. • It is unreasonable to request strict compliance as the variation does not result in any significant external bulk and scale impacts. The resultant built form is received as it is currently received save for improved façade softening with the glazed elements and reduced bulk of concrete block work and retaining at the interface with the reserve and waterway below. • The lower floor area will be highly useable and there will be no external amenity losses resulting from the floorspace variation which demonstrates that applying the standard is unreasonable. • Flexibility should be applied to the FSR standard as notwithstanding the magnitude of the variation, the circumstances indicate that the variation is not contributing to any overdevelopment of the subject site and will only cause positive outcomes. <p>ii) that the objectives of the standard are not relevant to the proposal</p> <p>An FSR of 0.4:1 is considered not relevant to this lot of only 366.3m² which is the smallest lot in its line. The lots within the zone are generally larger and the waterfront has been carved off as a nature reserve which assists in how these built forms are</p>

Objective	Comment
	<p>received visually. The bulk and scale of dwellings including the subject dwelling are still commensurate with those on the larger lots and the resultant built forms and particularly the subject site are not out of character with the area despite variation to the floorspace control.</p> 
<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>There are no adverse environmental impacts created by this proposal which further supports the application of flexibility in this instance.</p> <p>Positive environmental impacts result from the proposal with a better built form and reduced bulk and scale as viewed from the reserve and waterway.</p> <p>The non-compliant floor area can be attributed to the modern opportunity available to create flexibility in the use of outside spaces by provision of weather protection that can be closed or opened for convenience.</p> <p>The ability to close the space will improve amenity for residents, recognising that Sydney Harbour is a working harbour and can be noisy.</p> <p>The small size of the site and an FSR standard that has been set for larger lots is another ground to justify the variation.</p> <p>Another environmental planning ground is that the dwelling will read ostensibly as the same built form with some softening elements.</p> <p>Shadow and privacy impacts or view loss do not result from the proposal.</p>

Clause 4.6.4 Consent Authority to Keep Record of Assessment

Clause 4.6.5 Repealed

Clause 4.6.6 Not Applicable

Clause 4.6.7 Repealed

Clause 4.6.8 Not Applicable

Conclusion

The proposed application remains consistent with the objects of Part 1.3 and requirements of Part 4 of The Act. The proposal is permissible with consent and will result in a dwelling that can be used to its full potential. The proposed additional floor area will create a development that:

- Will not result in disharmony within the existing foreshore and reserve.
- Will improve how the built form is received from the foreshore and reserve, noting reduction in concrete bulk and introduction of soft glazing elements that will reflect the landscape.
- Does not impact the natural environment.
- Does not impact views or privacy.
- Does not impact solar amenity of neighbours.
- Supports the needs of the residents by the flexible floorplate offering the ability for external or internal recreation space weather and noise conditions dependant.
- Promotes the orderly and economic use and development of the land.
- Promotes good design and amenity of the built environment.

Further, the proposed variation meets the objectives of the standard and the zone and therefore, strict compliance with the floor space ratio standard is considered unreasonable and unnecessary in this case.

Yours Faithfully,



Nicole Lennon