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CLAUSE 4.6
EXCEPTION-
HEIGHT OF
BUILDING

7 BOWER STREET, MANLY

CLAU SE 4.6 EXCEP TION



7 BOWER STREET, MANLY

DWELLING HOUSE WITH POOL

PREPARED FOR
JURGEN SPANGL & KARIN MUNDSPERGER

PREPARED BY





CONTACT INFORMATION
NICHOLAS DOWMAN

PO BOX 512
SURRY HILLS NSW 2010
P (02) 9332 2299
WWW.WILLANAURBAN.COM.AU


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1 INTRODUCTION

1.1 PURPOSE

This submission has been prepared for Jurgen Spangl & Karin Mundsperger to accompany a Development Application (DA) to Northern Beaches Council, relating to the property known as 7 Bower Street, Manly (the Site). It seeks a variation of the development standard pertaining to building height contained in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

1.2 THE PROPOSAL

The variation relates to a proposal for a dwelling house comprising demolition of existing structures on the Site and construction of a new dwelling house and pool.

THE USE OF CLAUSE 4.6

1.3 VARYING A DEVELOPMENT STANDARD

The NSW Department of Planning and Environment's publication "*Varying Development Standards: A Guide*" (August 2011), states that:

The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:

- *Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP).*
- *State Environment Planning Policy No 1 – Development Standards (SEPP1).*

In this instance, SEPP 1 does not apply as MLEP 2013 is a Standard Instrument LEP.

This proposal seeks to vary the Height of Building development standard applicable to the Site in the relevant DA and not introduce new controls across an area. Subclause 4.6 (6) of MLEP 2013 also states specifically when this clause is not to be used. Neither the Site, nor the proposal, satisfy these criteria and therefore, the use of Clause 4.6 to vary the Height of Building is appropriate in this instance.

2 NATURE OF THE VARIATION

2.1 WHAT IS THE APPLICABLE PLANNING INSTRUMENT AND ZONING?

The MLEP 2013 is the environmental planning instrument that applies to the Site. The Site is zoned E3 Environmental Management under MLEP 2013, in accordance with the Land Zoning Map.

2.2 WHAT ARE THE ZONE OBJECTIVES?

The relevant objectives of the E3 Environmental Management Zone are:

- *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.*

2.3 WHAT IS THE STANDARD BEING VARIED?

The standard being varied is the Height of Buildings development standard contained in Clause 4.3(2) of MLEP 2013.

2.4 IS THE STANDARD TO BE VARIED A DEVELOPMENT STANDARD?

Yes, the Height of Building standard is considered to be a development standard in accordance with the definition contained in Section 1.4 of the *Environmental Planning and Assessment Act 1979 (as amended)* (EP&A Act) and not a prohibition.

2.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

No, the development standard is a numerical control.

2.6 WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

The objectives of Clause 4.3 of MLEP 2013 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.*

In summary, the underlying purpose of the development standard is to manage the height and scale of any future built form, in order to mitigate any adverse impacts on the character and amenity of the surrounding area.

2.7 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Subclause 4.3 (2), in association with the Height of Buildings Map of the MLEP 2013, establishes a maximum building height of 8.5 metres for the Site, as shown in Figure 1, below.

FIGURE 1: EXCERPT FROM THE HEIGHT OF BUILDINGS MAP 006

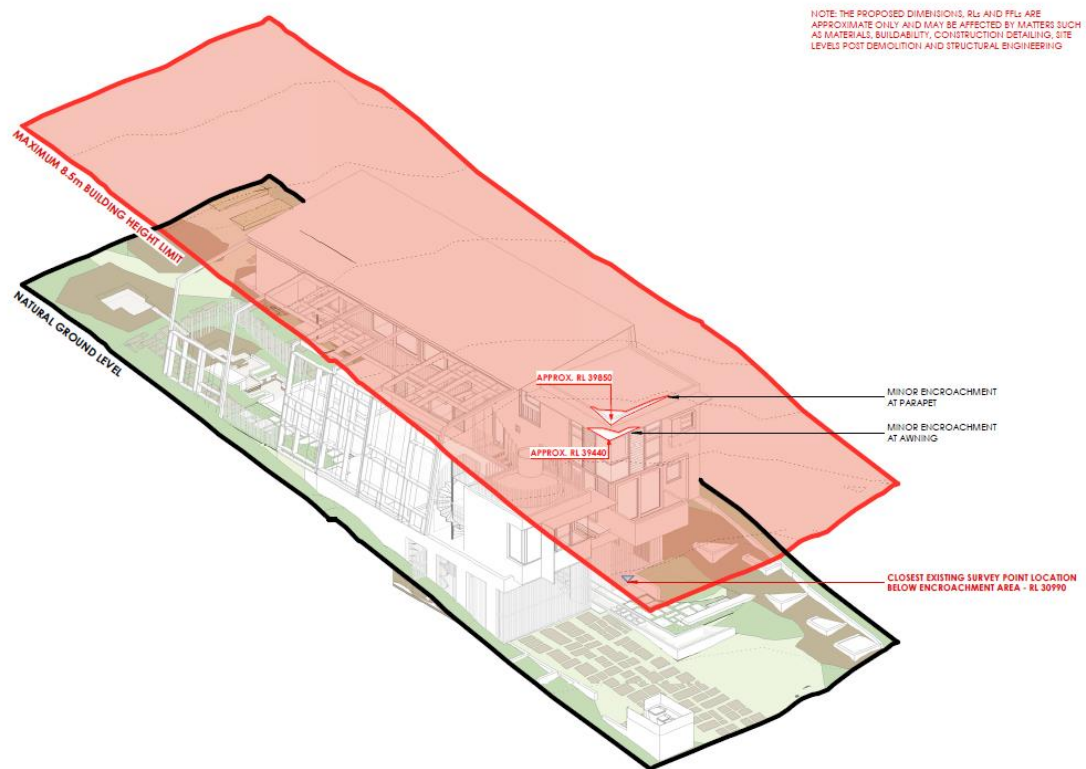


Source: MLEP 2013 HOB MAP 006

2.8 WHAT IS THE PROPOSED NUMERIC VALUE OF THE VARIATION IN THE DEVELOPMENT APPLICATION?

The maximum permitted building height for the Site is 8.5m. The maximum variation to the height limit proposed is for the corner of the parapet (see Figure 2 below), which is a centralised position on the site. A variation of 0.36m from the numeric standard is proposed as a consequence of the topographic nature of the site.

FIGURE 2: 3D HEIGHT DIAGRAM



SOURCE: CPLUSC ARCHITECTURAL WORKSHOP

2.9 WHAT IS THE CONTEXT OF THE VARIATION?

The site is located on the southern side of Bower Street, which slopes significantly from the rear of the site to the front. The variation to the building height is limited to a small corner portion of the awning and parapet of the dwelling, located centrally on the site (see Figure 2). Due to the central and minor nature of the proposed height variation, there will not be any material adverse impacts to neighbouring properties or the public domain. As a consequence of the variation, there will be no opportunity for overlooking, view loss, or overshadowing. The design, as proposed, allows for a consistent built form outcome with the streetscape by adopting a front setback that reflects neighbouring properties. The minor nature of the variation and varied slope of the site means that the variation will be indiscernible from the street.

FIGURE 3: THE PROPOSAL VIEWED FROM BOWER STREET - DEMONSTRATING CONSISTENCY OF FRONT SETBACK AND STREETScape PRESENCE.



SOURCE: CPLUSC ARCHITECTURAL WORKSHOP

3 ASSESSMENT OF VARIATION

3.1 OVERVIEW

Clause 4.6 of MLEP 2013 establishes the framework for varying development standards applying under the instrument. Subclause 4.6(3)(a) and 4.6(3)(b) state that Council must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating:

'4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause 4.6(4)(a) mandates that development consent must not be granted for a development that contravenes a development standard unless Council is satisfied:

- (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and....'*

An assessment of the Clause 4.6 variation is provided below, in accordance the above requirements. In addition, this variation has also been prepared in accordance with the Guidelines, which identifies matters to be addressed in an application to vary a development standard.

3.2 IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Yes - in this instance, the strict numerical compliance with the development standard for Height of Buildings is unreasonable and unnecessary. In determining what constitutes 'unreasonable or unnecessary', the following series of questions can assist:

- (a) Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?

- (b) Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?
- (c) Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?
- (d) Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?
- (e) Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently, compliance with that development standard is unnecessary and unreasonable.

Strict compliance with the Height of Buildings standard would be unreasonable or unnecessary, in this particular instance, for the following reasons that are specific to this site and proposal:

- The proposal is consistent with the relevant environmental and planning objectives pertaining to the Height of Buildings development standard and the E3 Environmental Management Zone.
- Although the underlying objectives for the Height of Buildings standard are a valid and relevant matter for consideration, the variation would still result in a scale and character that is compatible with the surrounding locality. A development compliant with the building height provisions contained in the MLEP 2013 would not necessarily achieve a perceivably different or better planning outcome. The proposed design and associated landscaping provide an appropriate and enhanced setting for the development.
- The underlying objective or purpose of the Height of Buildings development standard seeks to ensure compatibility with character of the area. The character in surrounding streets, in part, is of large detached, two storey dwellings. With this in mind, the proposal will fit in well with the surrounding locality.

The proposed variation is well founded, as demonstrated further in this submission. Compliance with the standard is unreasonable as the development, as proposed, achieves the objectives of E3 Environmental Management zone and the Building Height standard. A development that strictly complies with the standard is unnecessary in this circumstance as no appreciable benefits would result by restricting the building height,

given the satisfactory character achieved by the scale, design and landscaped nature of the proposal and absence of adverse amenity impacts.

It is also submitted that compliance with the Height of Buildings development standard would be unreasonable and unnecessary for the reasons expanded upon below.

3.3 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

Yes. In the circumstances of the case, there are sufficient environmental planning grounds to justify the variation to the development standard, namely:

- The context of the variation discussed in Section 2.9.
- The proposal satisfies the objectives of the E3 Environmental Management zone and the objectives of the Height of Buildings development standard, having regard to the particular nature of the development and the particular circumstances of the Site. Impacts on adjoining properties, as a result of the variation, would not warrant the refusal of consent.
- The non-compliance with the standard will nevertheless result in a scale of development that is compatible with both the existing and future character of the locality.
- The variation to the building height standard will not have unreasonable visual impact from the public domain, given the topography, existing built form, landscaping and the proposed central location of the variation.
- The non-compliance with the Height of Buildings standard does not contribute to adverse amenity impacts in terms of visual privacy, overshadowing or view loss.

3.4 PUBLIC INTEREST

Approval of the variation to the building height in this proposal is in the wider public interest as the underlying objectives are met. The variation supports the achievement of the redevelopment of the site to achieve the optimal development capacity without adverse amenity impacts. The proposal provides a satisfactory response to the land use zoning objectives and improving site aesthetics through a more appropriate, urban design responsive, built form outcome.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE E3 ENVIRONMENTAL MANAGEMENT ZONE:

The proposal remains consistent with the relevant zone objectives outlined in Clause 2.3 and the Land Use Table of the MLEP 2013, despite the non-compliance, as demonstrated below:

Objective: To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

The proposal provides multiple design responses to ensure the management and protection of the special values of the site. The natural rocky outcrops exhibited onsite are appropriately incorporated into the proposal and feature as a prominent aesthetic of the overall design. The proposal also includes management and protection design principles to support and maintain the habitat of the long nosed bandicoot.

Objective: To provide for a limited range of development that does not have an adverse effect on those values

The proposal as a dwelling house is expressly permissible in the zone and has been designed to not adversely impact the inherent values of the E3 Zone.

Objective: To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.

The proposal is for a permissible dwelling house and includes a landscape plan which incorporates the existing topography and character into the overall design. The landscape plan also encourages the planting of more shrubs and bushes to protect the natural aesthetic of the site. The design of the house has been consciously crafted so that it merges well with the natural surroundings of the site. The design of the house engages with the existing physical elements, providing a link between the natural and built environment. In this regard it allows for a sustainable residential use which protects and conserves the greenery and enhances the scenic qualities of the surrounding area.

Objective: To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

The proposal incorporates significant geological and vegetative features into the design. The house has been designed so that it does not dominate the site and does not negatively impact on foreshores, geological features, or bushland.

Objective: 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.

The proposal will not have any detrimental impacts to the surrounding water or ecological quality and is not located at the immediate foreshore.

Objective: To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

The proposal has been through a conscious design process to ensure that it is appropriate to the surrounding vegetation, topography and land uses. It is well under the floor space ratio permitted onsite and is appropriately setback from the street frontage, while appropriately using the topography of the site in a similar manner to neighbouring dwellings. The minor variation has no adverse amenity impact to neighbouring properties and will be indiscernible from the streetscape, adopting a similar or lesser bulk to other dwellings within the street.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD:

The proposal remains consistent with the relevant objectives of the Height of Buildings development standard outlined in subclause 4.3 (1) of the MLEP 2013, despite the numerical non-compliance with subclause 4.3 (2), as demonstrated below:

Objective: 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 proposal presents as a two storey dwelling house, which is consistent with the sloping nature of the site and current streetscape character. The proposal is of a reasonable height for the site and will be consistent with the identity of the residential suburb. The design accommodates appropriate height and scale and has considered appropriate landscaping, which results in enhanced amenity for residents.

Objective: To control the bulk and scale of buildings

The proposal is compliant with the floor space ratio requirements permissible for the site and is modest in terms of bulk and presentation to the street, relative to other dwellings in the street. Bulk and scale of the proposal has been thoroughly considered out to ensure the design is consistent with neighbouring properties and the surrounding streetscape.

Objective: 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 proposal is compliant in terms the retention of views. The topography of the Site is significantly sloped, and the proposed variation has no bearing on view lines from neighbouring properties, as demonstrated in the submitted architectural suite of drawings (see DA022-023).

Objective: 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

Shadow Diagrams included with this submission demonstrate the Site's ability to maintain solar access to private open space and habitable rooms of adjacent dwellings. The proposal will not result in any detrimental overshadowing to neighbouring properties, particularly not as a consequence of the variation.

Objective: 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 Site is located within the E3 Environmental Management zone and appropriately adopts a residential use that does not conflict with surrounding uses. The proposal retains a compliant proportion of deep soil and Landscaped Open space, with landscaping thoughtfully located to soften interfaces with adjoining properties and the streetscape. The proposed design does not unreasonably, adversely impact on the scenic quality of coastal or bush environments and maintains appropriate elements for the bandicoots in the area.

3.5 WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 1.3 OF THE ACT?

The relevant objects set down in Section 1.3 are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) ...*
- (f) ...*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) ...*
- (j) ...*

In this instance, strict compliance would unnecessarily limit the opportunity to provide a high-quality dwelling house, with no discernible reduction in environmental impacts. The proposal adopts a consistent front setback with adjoining properties, resulting in a minor variation to height centrally on the site. The proposal satisfies the underlying objectives of both the zone and the development standard, by providing residential development in a form that is consistent with the character of a local area, without compromising the amenity outcomes of the adjoining properties or surrounding locality

The proposed non-compliance with the development standard would support, rather than hinder the attainment of the objects of Section 1.3 (a) - (d), (g) and (h) of the EP&A Act. These objectives are to encourage social and economic welfare of the community, the proper management of built and natural resources, good design and to promote and coordinate orderly and economic use and development of land. The proposal is consistent with the objectives of both the land use zone and the development standard.

In this instance, strict compliance with the development standard would not result in any discernible benefits to the amenity of adjoining sites or the public. It therefore stands that the environmental planning grounds and outcomes that are particular to this development and this Site are such, that a departure from the development standard in that context would promote the proper and orderly development of land.

4 CONCLUSION

This report accompanies the Development Application for a dwelling house at 7 Bower Street, Manly. An exception is sought, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 to the maximum permissible Height of Building prescribed by Subclause 4.3(2) of the MLEP 2013.

The underlying objective or purpose of the Height of Buildings development standard seeks to ensure compatibility with character of the area and minimise adverse impacts. The character in surrounding streets is primarily comprised of two storey dwellings. The minor variation will result in a scale and character that is compatible and indiscernible with the surrounding locality and context. The design accommodates generous landscaping and gives opportunity to enhance the natural features of the Site. It also allows the aesthetic and ecological values of the site to remain, which results in enhanced amenity for residents.

The variation will enable a well-considered development to be provided that addresses the site constraints, streetscapes and relevant objectives of both the standards and the zone. The report finds that the variation will not result in unreasonable environmental impacts or adverse amenity impacts to adjoining properties and the public domain. In this case, a variation of the development standard is justified.