



25 May, 2022

The General Manager
Northern Beaches Council
Town Hall, 1 Belgrave Street,
Manly,
NSW 2095.

Attention: Planning & Building

Dear Sir / Madam,

REQUEST TO VARY THE LEP UNDER CLAUSE 4.6

RE: Development Application – DA2022/0727 - PAN-218949
12 Clarence Street, BALGOWLAH 2093

The proposal submitted to Northern Beaches Council for No. 12 Clarence Street, Balgowlah is considered to not strictly comply with the **Floor Space Ratio** controls outlined in Clause 4.4 of the Manly Council's – **Local Environmental Plan 2013**.

An objection under **Clause 4.6** of the **Manly Local Environmental Plan** is therefore made, as the proposal does not strictly comply with the development standard contained in the Manly Council – Local Environmental Plan 2013 and is considered to be unreasonable and unnecessary in this circumstance.

'Development standards' are defined in Section 1.4 Definitions of the Environmental Planning and Assessment Act 1979:

Development standards means provision of an environmental planning instrument in relation to the carrying out of development, being provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing requirements or standards in respect of-

The area, shape or frontage of any land, the dimensions of any land, building or works, or the distance of any land, building or works for any specific.

The proportion or percentage of the area of the site which a building or works may occupy.

- (a) The area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) The proportion or percentage of the area of a site which a building or work may occupy,*
- (c) The character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work*
- (d) The cubic content or floor space of a building,*
- (e) The intensity or density of the use of any land building or work,*
- (f) The provisions of public access, open space, landscaped space, tree planting, or other treatment for the conservation, protection or enhancement of the environment*
- (g) The provisions of facilities for the standing movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) The volume nature, and type or traffic generated by the development,*



- (i) *Road patterns,*
- (j) *Drainage,*
- (k) *The carrying out of earthworks,*
- (l) *The effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *The provisions of services, facilities and amenities demanded by development,*
- (n) *The emission of pollution and means for its prevention or control or mitigation, and*
- (o) *Such other matters as may be prescribed.*

Manly – Local Environmental Plan 2013 - Part 4 Principal development standards, Clause 4.4 of LEP 2013 limits the floor space ratio Map 005 to 0.45 : 1.

Manly Council – Local Environment Plan 2013 dictionary defines Gross Floor Area as:

- **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.

The proposed development 'Additions and Alterations to an Existing Residence at 12 Clarence Street, Balgowlah does not strictly comply with this clause.

Exceptions to development standards are defined in Clause 4.6 of the Local Environmental Plan as:

- (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 for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—



- (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) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
 - (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
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note - When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 6.15,
 - (cb) a development standard on land to which clause 6.19 applies.



The objection is made on the following grounds:

The area of the site where the proposed additions are to take place has a site / lot area of **334.50 m²** which is small & undersized as illustrated on Lot Size Map (LSZ_004), meaning that the permissible gross floor area of a residence on the site should not exceed **150.52 m²**.

The existing ground & upper floors of residence has a total floor space area as defined in Manly Councils LEP 2013 of **103.58 m²**. The proposed additions has a floor area of **90.68 m²**.

The total gross floor area of the existing ground floor residence and the proposed additions has a total of **194.26 m²** which according to Manly Council LEP 2013 is **43.74 m²** over the permissible floor space ratio.

- The proposed additions are consistent with the size, bulk and scale of similar residences in the area.
- The proposed first floor additions is set back from the front building line reducing any perceived bulk and scale issues and reducing the possible built upon area.
- The proposed ground floor addition is modest with minimal additional footprint to the rear of the existing residence
- The proposed development as whole is for a modest family home to accommodate the family need for additional space for a growing family.
- It should be noted Manly DCP 2013 - *Clause 4.1.3.1 Exceptions to FSR for Undersized Lots*, allows for additional floor area for small sized lots.
- The proposal still meets the aims and objectives of the Clause, despite the non-compliance.

The inflexible imposition of the development standards does not necessarily ensure that the most appropriate development for the site is achieved, and in this case, we feel the proposal should be supported in its current form.

Yours Faithfully

Evolving Design & Drafting