

## **Application to vary a Development Standard**

DA2019/0814 - 11/43 - 45 North Steyne MANLY NSW 2095

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The purpose of this submission is to formally request a variation to the Heights of Buildings control pursuant to Clause 4.6 of the Manly LEP 2013

### **1. What is the name of the environmental instrument that applies to the land?**

Manly 2013

### **2. What is the zoning?**

B2 Local Centre

### **3. What are the objectives of the zone?**

Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.

### **4. What is the development standard being varied?**

Height

### **5. Under what clause is the standard listed?**

Clause 4.3

### **6. What are the objectives of the standard?**

- (1) 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.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

**7. What is the numeric value of the development standard in your development application?**

12

**8. What is the proposed numeric value of the development standard in your development application?**

12.61

**9. What is the percentage variation?**

5 %

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

The objectives of the standard have been achieved. The proposed retractable awning will not add to the height of the existing building but will be lower than the existing ridge line. The awning is consistent with the prevailing building height and is slightly lower than the approved privacy screen separating the subject property from the adjoining property at 42 North Steyne Manly. The roof form is an open structure and fits well into the allotment without adding to the bulk or scale of the building.

There is no impact in terms of view sharing from adjacent neighbours or public areas with the awning built over an existing verandah it adds no additional height to the approved building and in fact provides additional privacy for the neighbours immediately to the west within the Pacific Waves Building.

The awning has minimal impact with regard to privacy and solar access enjoyed by adjacent properties. It maintains adequate sunlight access to habitable rooms of adjacent dwellings and the residence itself.

In terms of the zones objectives, the proposed development has little or no impact on the amenity of adjacent properties and further that a superior outcome will be achieved beyond that expected under the planning controls applying to the site as the awning and balustrade provides improved amenity by way of additional privacy. This is achieved notwithstanding the proposed non-compliance with the Height of Buildings control.

The objectives of the Height of Buildings control remain relevant and the proposed development is generally consistent with, or not antipathetic to, the objectives of the Height of Buildings control, notwithstanding the small numerical variation.

**11. How would strict compliance hinder the attainment of the objectives specified in section 5 (a) (i) and (ii) of the Act?**

Strict compliance with the height control in this instance would hinder greatly the residents' right to an active use of the private open space of the dwelling. The proposed shade structure provides shelter from the sun contributing to the protection of the health and safety of the occupants.

The proposed awning does not change or add to the existing and approved building height.

**12. Are sufficient environmental planning grounds to justify contravening the development standard?**

The proposed awning and balustrade certainly achieves the objectives of the standard. As the height of the building stays the same as prior to the proposed awning, together with the reasons set out above, it is considered that sufficient environmental planning grounds have been met to justify contravening the development standard In this instance.

The proposed awning and balustrade is an open aluminium, ecologically sustainable structure that will have minimal long term effect on the environment and so it is compatible with the objectives of the Environmental Planning and Assessment Act 1979.

The proposed awning will be built over an existing hard floor built of concrete and tile and has no detrimental effect on neighbouring properties with regard to view sharing, solar access or privacy. It's a high quality designed and constructed awning that will enhance the occupants' use of the private open space of the dwelling.

**Conclusion**

This application has shown that there are sufficient environmental planning grounds to justify contravening the development standard and that the development standards relating to the building height are unreasonable and unnecessary in this instance.

The proposed awning will sit on an existing and approved verandah and will not increase the height of the existing and approved building. It will be less than the height of the existing and approved privacy screen that is positioned on the boundary with the neighbouring property at 42 North Steyne. The proposed structure is consistent with that of the existing residence and will have no adverse effect on the solar access, streetscape or the distinctive character of the area. It is consistent with the objectives of the standard and the objectives for development within the zone.

It is considered that the development will not compromise the planning intent for the site or the character and amenity of the surrounding area. This application has shown justification that the requirements set out in the decision of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 have been met to enable Council to determine the application.

As part of this assessment, reference is made to Commissioner Roseth in *Pathburn v North Sydney* [2005] NSWLEC 444 where the Senior Commissioner expressed in terms of the planning principle that deals with impacts on neighbouring properties, the following:

*“One should balance the magnitude of the impact with the necessary and reasonableness of the proposal that creates it. An impact that arises from a reasonable or necessary proposal should be assessed differently from an impact of the same magnitude that arises from an unreasonable or unnecessary proposal.*

*An impact that arises from a proposal that fails to comply with planning control is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”*

In this instance, the proposal will not have detrimental amenity impacts on the adjacent allotments in regard to loss of solar access or views resulting from the non-compliance.

In general terms, compliance with the Height of Buildings control is unreasonable or unnecessary in these particular circumstances and there are sufficient environmental planning grounds to justify the proposed variation to the Height of Buildings Control.