

14 July 2025

**LEP Clause 4.6 exception request
LEP Cl 4.3A - Special height provisions
11 Seaforth Crescent, Seaforth**

1 Introduction

This is a written request for an exception to the 'special height provisions' development standard made pursuant to clause 4.6 of the LEP.

The written request accompanies the development application for a new dwelling house at the subject property.

Manly LEP 2013 [LEP], Clause 4.3A 'Special height provisions' establishes that the building height must not exceed the highest point of the road adjoining the centre point of the lot boundary that adjoins the road.

It has been determined by survey that the highest point of the road adjoining the centre point of the lot boundary is RL 47m AHD.

Whilst the proposed dwelling house has a maximum roof RL of 47m AHD, minor ancillary elements exceed this level including the 1m high steel safety balustrade, western driveway upstand, solar panels, landscape elements upon the roof.

The exception ranges between 740mm and 1,000mm as depicted on the plan extracts below. Figures 1 to 3 below show the location, nature, and extent of the proposed development's exception.

2 Site and location description

The site is located 11 Seaforth Crescent, Seaforth. It is legally described as Lot 16 in Deposited Plan 4889 and has an area of 1,846m².

The lot is steep, irregular in shape, and has water frontage to Middle Harbour. The land displays a significant level difference of 43.3m from RL 45.9 near the north eastern corner of the lot down to RL 2.6 near the south eastern corner of the lot.

The land is zoned C3 Environmental Management under the LEP. Dwelling houses and secondary dwellings are permissible with development consent.

The land is not identified in the LEP as being within a conservation area or affected by heritage, bushfire, coastal risk, flooding or acid sulfate soils. The land is identified in the LEP as being affected by biodiversity, landslip, heritage foreshore, and a foreshore area / building line.

There are views generally in a southerly direction towards Middle and Sydney Harbour and their foreshores from the elevated hill side location.

The location is built-up containing a diverse mix of residential housing forms as evident within the photographs herein.

There is a diverse mix of property frontages to the street with garages, carports, and car parking areas with nil or minimal street setbacks. There are no consistent front setbacks. There is no consistency of materials or roof forms.

No significant change to the character is foreshadowed by the planning controls. Therefore, the existing character is a relevant consideration in guiding the assessment of the proposed built form.

The figures on the following pages depict the character of the property and its existing development.

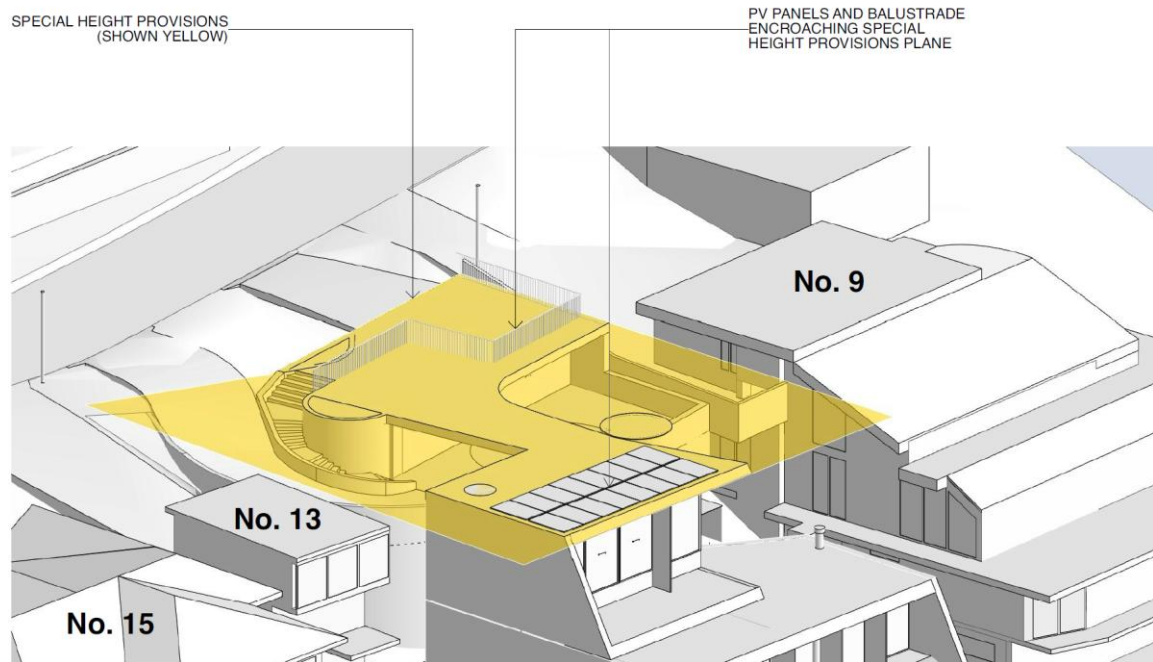


Figure 1 – the special height provision exception relates to the steel balustrade, western driveway upstand, solar panels, landscape elements upon the roof

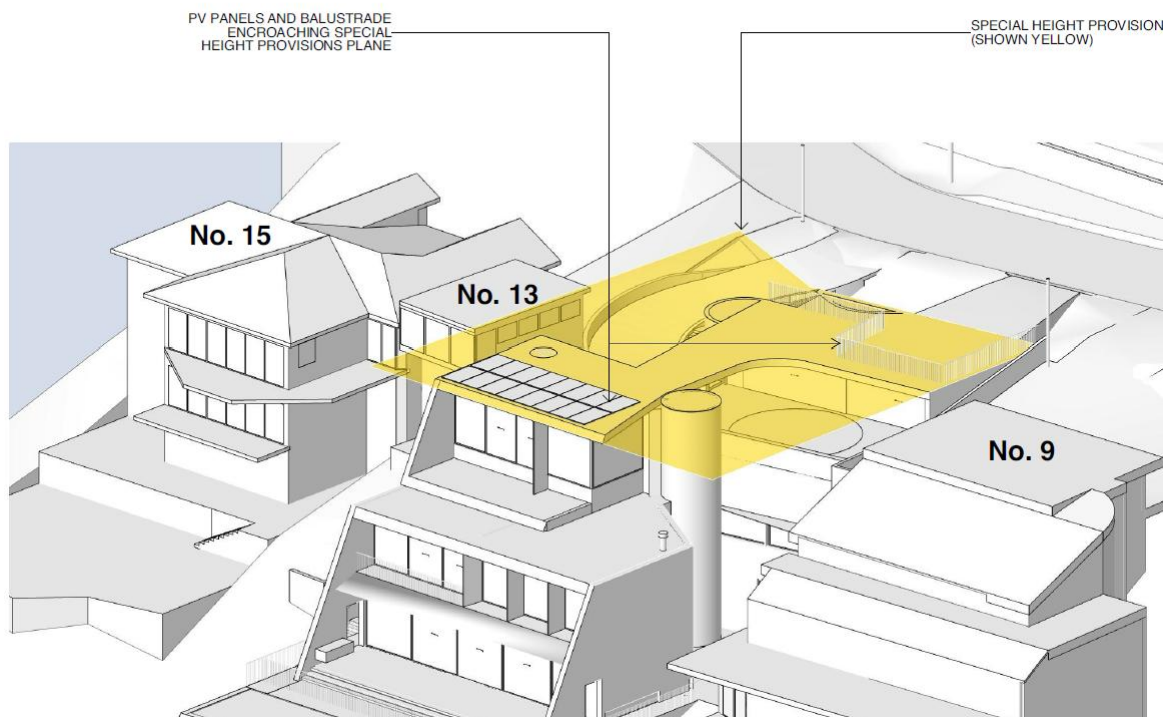


Figure 2 – the special height provision exception relates to the steel balustrade, western driveway upstand, solar panels, landscape elements upon the roof

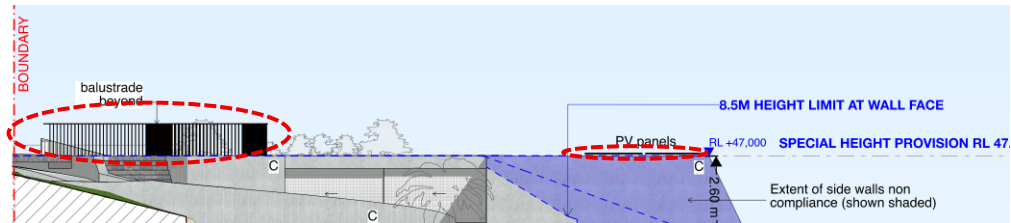


Figure 3 – the building height exception relates to the balustrade and solar panels

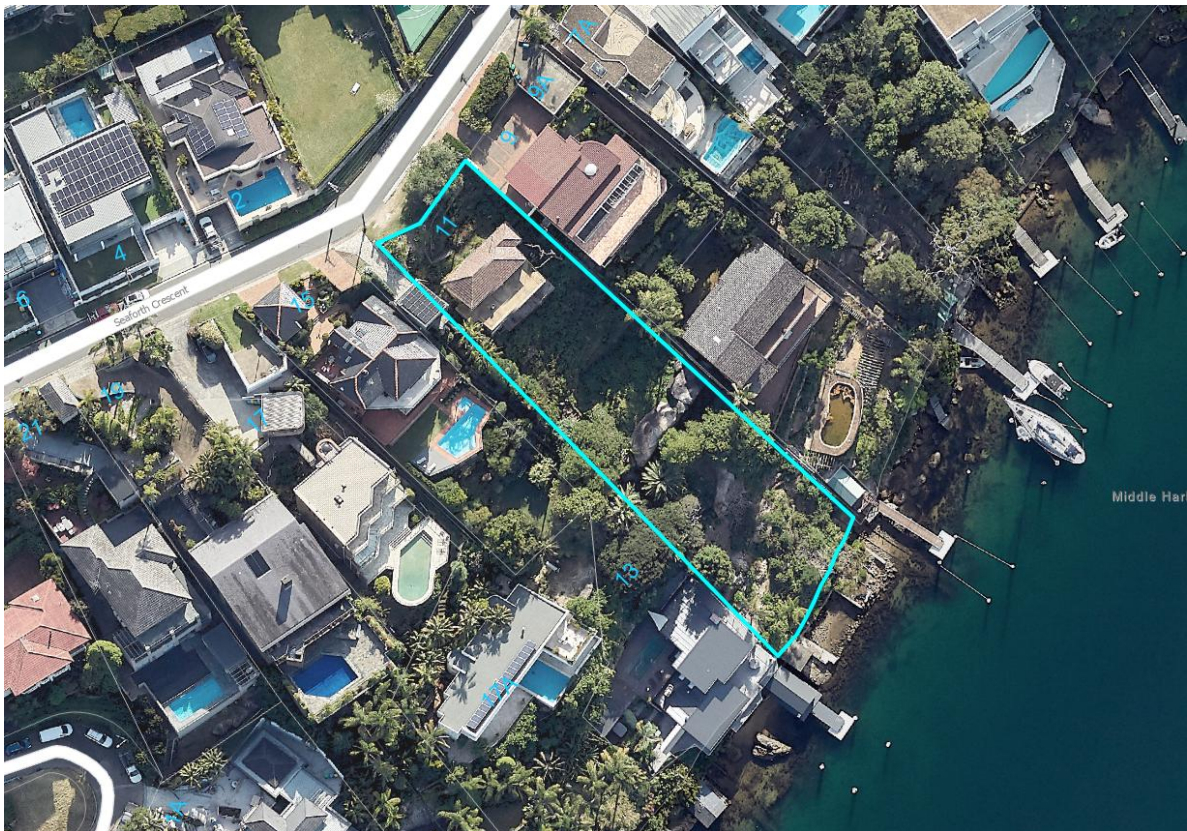


Figure 4 – Alignment, orientation and configuration of the subject site and adjoining properties (courtesy Northern Beaches Council Mapping)



Figure 5 – existing views from road adjoining the site. The existing ridge is at RL 44.7 AHD [source; detailed survey plan] which is 2.3m below the adjacent crown of the road [RL 47]



Figure 6 – character of development within the local area [visible from the site]



Figure 7 – the character of development at the adjoining property to the north east at 9 Seaforth Crescent



Figure 8 – character of development within the local area [visible from the site]

3 Key statutory considerations

3.1 LEP Clause 4.6

Key aspects of LEP Clause 4.6 are repeated below:

“(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) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard”.*

3.2 Provisions of the development standard – ‘4.3A Special height provisions’

‘(1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

(2) Despite clause 4.3 (2), the height of a building on a lot identified as “Special height provisions” on the [Height of Buildings Map](#) must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot’.

3.3 Objectives of the Environmental Planning and Assessment Act

The objectives of the Act, under 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) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (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) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment’.*

4 Clause 4.6 exception to a development standard

As required by clause 4.6(3), the following is a submission to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the standard.

5 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 may be well founded. The first possible way is relevant to the subject matter and is repeated below:

1st ‘The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable’.

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6(3)(a), compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the standard are satisfied. The objective of the standard is repeated and responded to below.

6 Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objective of the Clause 4.3A special height provisions’ of LEP 2013 which is repeated and responded to below:

Objective (1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Response -

The objective of the standard is:

*to maintain public views to Sydney Harbour from street level on local roads
above steeply sloping sites on certain land*

The proposed dwelling house has a maximum roof RL of 47m AHD. Minor ancillary elements exceed this level including the 1m high steel safety balustrade, western driveway upstand, solar panels, landscape elements upon the roof.

The assessment has considered the public views to Sydney Harbour from the street level in terms of both a complying building envelope and the proposed building envelope.

The complying building envelope is depicted in figure 8 prepared by the project architects.

The proposed building envelope is depicted in figure 9 prepared by the project architects.

It is demonstrated that:

- The driveway barrier elements will have no adverse impact on the views to and from Sydney Harbour from the public domain.
- The 1m high steel safety balustrade is notated on the plans as being '80% open' making this a recessive and translucent [rather than solid] visual element that will allow some views to be seen through the element.
- Overall, the images show that there is a minimal impact resulting from the proposed exceptions. Significant views of Sydney Harbour from the street level will remain despite the proposed exception.

Therefore, despite the exception the proposed development will maintain public views of Sydney Harbour from the street level adjoining the site.

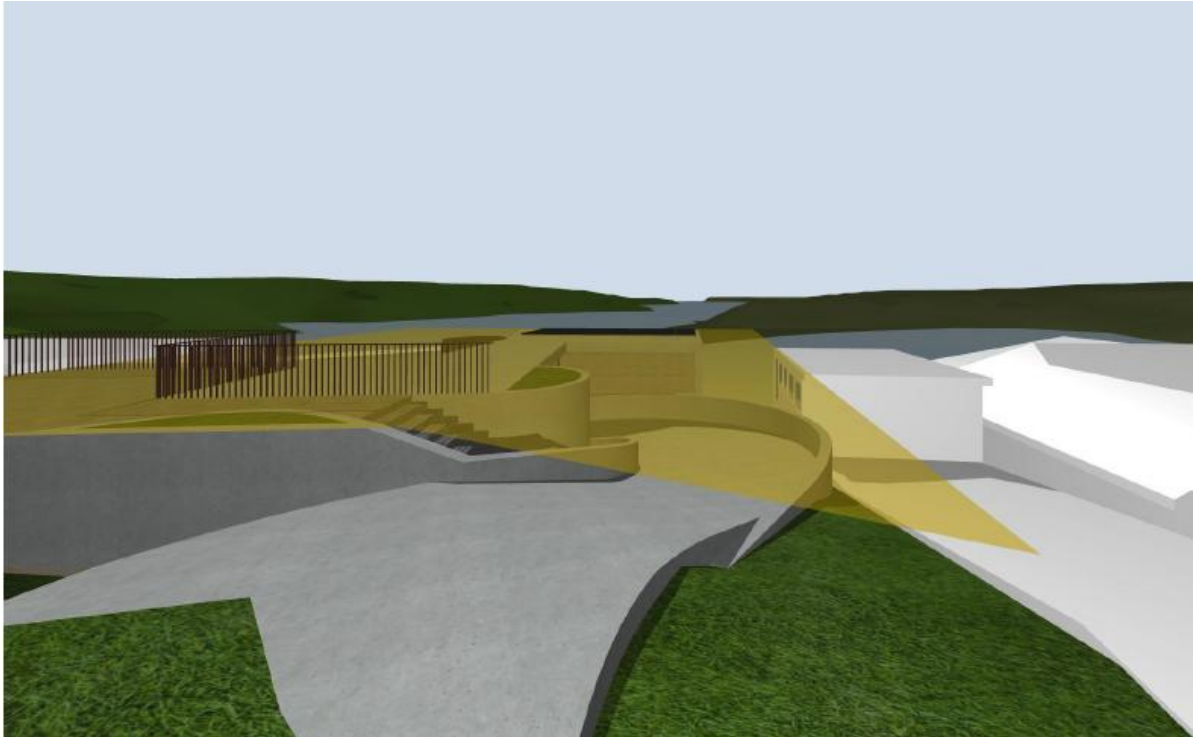


Figure 8 – Image showing a compliant special build height provision – MCK Architects



VIEW FROM SEAFORTH CRESCENT - PROPOSED

Figure 9 – Image showing the proposed height - MCK Architects

Note: the images are based on a person of 1650mm eye level height standing at RL 47 on Seaforth Crescent

7 Clause 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard. The environmental planning grounds in support of the exception are listed as follows and described below.

The proposal is compatible with the pattern, scale, and character of development within the local streetscape which includes building elements that are above the special height provision.

The proposal is compatible with the height and scale of adjacent residential dwelling houses along Seaforth Crescent, located on the lower side of the road level.

There will not be any significant or inappropriate disruption to the streetscape or local amenity from the proposed exception.

The proposal will facilitate additional off-street visitor parking in a location that has limited on-street parking availability.

Despite the exception, the proposed development maintains a development that is compatible within the local area.

The exception does not result in additional gross floor area or bulk above the building height plane.

7.1 Consistent with the objectives of the Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

(c) to promote the orderly and economic use and development of land; and

(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.

In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in a manner that satisfies the applicable planning considerations because it will facilitate, renewal of the dwelling house, improved housing in a highly desirable location, designed to meet contemporary living needs, and satisfy building sustainability (BASIX) requirements.

In response to (g), the proposal results in a residential development that will promote good design and amenity of the built environment. The proposal:

- results in a design of visual interest which presents appropriately to adjoining land including the streetscape.
- maintains a front setback that is compatible with the streetscape.
- maintains landscape elements within the streetscape.
- provides a front setback and landscaped frontage that will enhance and complement the streetscape

For these reasons there are sufficient environmental planning grounds to justify the exception to the development standard.

8 Conclusion:

The exception proposed to the *special height provision* development standard has been acknowledged and the circumstances assessed, having regard to the provisions of LEP clause 4.6 and the relevant case law.

Council can be satisfied that this submission has demonstrated the matters required by cl 4.6(3) and that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

Therefore, the exception should be granted development consent.

Michael Haynes

Director - BBF Town Planners