

**APPLICATION MADE UNDER CLAUSE 4.6
OF MANLY LOCAL ENVIRONMENTAL PLAN 2013
TO VARY A DEVELOPMENT STANDARD.**

DEVELOPMENT APPLICATION
PROPOSED ALTERATIONS TO FRONT FENCE AND COURTYARD
TO UNIT 2, RECONSTRUCTION OF VERANDAH TO UNIT4 INCLUDING CONSTRUCTION
OF A PERGOLA OVER, ASSOCIATED MINOR WORKS TO FACILITATE INSTALLATION OF
SPRINKLER BOOSTER VALVES.
REPLACEMENT OF TILE ROOF WITH STEEL ROOFING AND REPLACEMENT OF
EASTERN AND WESTERN WINDOWS AND EXTERNAL DOORS AND BALUSTRADES.

**At: 8 Ocean Road
 MANLY**

SP 14402

FOR: THE OWNERS SP 14402

April 28 2023

Approval is sought to vary a development standard set out in Manly LEP 2013

THE STANDARD TO BE VARIED IS: BUILDING HEIGHT

1.0 INTRODUCTION

Approval is sought to vary the Development Standard for Building Height set out in Clause 4.3 of the LEP on the grounds set out below. - in accordance with Clause 4.6 of the Manly LEP

2.0 VARIATION PROPOSED

The Building Height map referred to in Clause 4.3.(2) of the Manly LEP 2013 sets a maximum building height for the site of 8.5 metres.

Building height in metres is defined in the Manly LEP 2013 as:

“the vertical distance from ground level (existing) to the highest point of the building,”

The maximum permissible building height for the site is shown on the map as 8.5 metres.

The existing building has a height exceeding 8.5 metres on all elevations except the front (Ocean Road Elevation) due to site topography and its construction well before gazettal of the LEP.

The proposed work retains the existing building height on all elevations.

In particular;

- The existing roof ridges and eaves heights are unchanged.
- Existing balcony and balustrade heights are unchanged.
- Height of privacy screens on balconies are unchanged.
- There is no change proposed to the currently approved height of privacy screens located along the southern boundary (refer to DA 2020/0875), nor to the currently approved landings and stairs.

The work being carried out above the 8.5 metre height limit is primarily limited to replacement and repair to existing building elements. No increase in height of these elements is proposed and the work is located within the existing building footprint and roof plan area.

The affected elements are:

- Replacement of existing, gutters, downpipes, fascias and soffit linings.
- Replacement of non-compliant balcony balustrades 2nd and 3rd floor.
- Waterproofing and re-tiling of existing balconies including installation of concrete hobs where needed. 2nd and 3rd floor.
- Replacement of existing balcony privacy screens 2nd and 3rd floor.
- Replacement of existing E elevation windows and balcony doors.

Balconies on the Ground and first floor are all located within the 8.5 metre height limit.

On the third floor it is proposed to enlarge the existing balcony door opening on the East elevation. This does not involve any increase in existing building height or building envelope. It constitutes an alteration to an opening in an existing wall.

3.0 CLAUSE 4.6 ASSESSMENT

3.1.1 CLAUSE 4.6(1) OBJECTIVES OF CLAUSE 4.6

(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.

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3.1.2 CLAUSE 4.6.(2) DEVELOPMENT CONSENT MAY BE GRANTED.

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.

Under section 1.4 of the Environmental Planning and Assessment Act 1979 Building Height is defined as a development standard. It is not excluded from operation.

3.1.3 CLAUSE 4.6.(3) CONSENT AUTHORITY TO CONSIDER WRITTEN SUBMISSION.

This application constitutes a written submission that seeks to justify contravention of the development standard by demonstrating that:

- a) *Compliance 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.*

3.1.4 CLAUSE 4.6(4) CONSENT AUTHORITY TO BE SATISFIED.

- a) The Consent Authority must be satisfied that:
 - (i) *the applicant's written request has adequately addressed the matters required to be satisfied 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 secretary has been obtained*

These matters are addressed below.

LEP Clause 4.6 (3)(a)

That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

The maximum building height shown for the land on the "Height of Building Map" is 8.5 metres.

The existing building has a height in excess of 8.5 metres.

The work does not alter the height of the existing building. The works proposed retain the existing building height on all elevations and with the exception of the enlarging of an opening on the existing east wall consist of replacement and repair of existing building elements.

Works required to facilitate fire safety upgrade works are located below the 8.5 metre height limit.

It is submitted therefore that compliance with the Development Standard is unreasonable and unnecessary in this case as the following applicable objectives of the control are satisfied.

- (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,

Wehbe v Pittwater (2007) NSW LEC 827- 5 part test.

This is applied to demonstrate that compliance with a development Standard is unreasonable or unnecessary.

It is not necessary to establish all of the tests or “ways”. One may suffice.

In this case the first and second tests are established as discussed and demonstrated above.

FIRST	The objectives of the standard are achieved notwithstanding non-compliance.
SECOND	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
THIRD	The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
FOURTH	The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable.
FIFTH	The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The objectives of the zone (Residential R 1) are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The variation to building height sought is in accord with these zone objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective 1:

The variation has no impact on the capacity of the dwelling to meet the housing needs of the community. It has no impact on the low density residential environment and does not involve any alteration to existing building height, bulk, and scale.

Objective 2:

The variation does not impact on the variety of housing types and densities. There is no alteration to housing type and density arising from the work.

Objective 3:

Not applicable.

The objectives of clause 4.3 Height of Buildings are:

- (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.

The variation to building height sought is in accord with these height objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective (a)

The existing building height and roof form is unaltered. The building remains consistent with topographic landscape, prevailing building height and does not impact on future streetscape character in the locality.

Objective (b)

The proposed work does not alter the existing bulk and scale of the building.

Objective (c)

The proposed work has no impact on

- (i) Views to nearby residential development from public spaces. (Including the harbour and foreshore.)
- (ii) Views from nearby residential development to public spaces (including the harbour and foreshores.).
- (iii) View between public spaces (including the harbour and foreshores).

Objective (d)

As the work does not alter existing building height, bulk, and scale it has no impact on solar access to public and private open spaces. Existing sunlight access to private open space and to habitable rooms of adjacent dwellings is maintained.

Objective (e)

Not applicable.

The site is not located within a recreation or environmental protection zone.

It is submitted therefore that taking into consideration the fact that the works do not increase existing building height, bulk, and scale and that with the exception of the making an enlarged opening in an existing wall, the works located above the 8,5 metre height limit comprise

replacement and repair to existing building elements, strict compliance with the development standard Building Height is unreasonable and unnecessary.

LEP Clause 4.6.(3)(b)

That there are sufficient environmental planning grounds to justify contravening the development standard.

The aspect of the development that contravenes the development standards (height of building) arises from the fact that this is an existing building.

The works with the exception of the making of an enlarged opening in an existing wall consist of replacement and repair to existing building element, with no change to existing building height, bulk, and scale.

The works retain the existing status quo with respect to impacts on the locality, neighbourhood, streetscape and adjoining public and private open space and on existing adjoining buildings.

As discussed above, the carrying out of works to the existing building does not involve any change to existing bulk scale and height and does not impact on the objectives of the zone in which the building is located, nor on the objectives of the standard to be varied: Building Height.

Clause 4.6(4) (a)

The proposal is consistent with the objectives of the standard and the zone objectives for the reasons discussed above.

It is submitted that the development is in the public interest due to the nature of the work proposed and because it is consistent with the objectives of the development standard (height of building) and the objectives of the R1 zone.

CONCLUSION

It is demonstrated that strict compliance with the building standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is also submitted that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.



Judith Kubanyi
KUBANYI ARCHITECTS
April 28 2023