



**REVISED OBJECTION PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE
MAXIMUM FLOOR SPACE RATIO AS
DETAILED IN CLAUSE 4.4 OF MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

**ALTERATIONS AND ADDITIONS TO
AN EXISTING DWELLING HOUSE**

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This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

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Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio of a building as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	0.6:1 129.18sqm
Proposed	0.77:1 166.06sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	22%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013.

The variation to the FSR control occurs within the existing building footprint with an extension to the first-floor level. The proposal is consistent with surrounding developments and the proposed minor increase in GFA compatible with the locality and complies with the maximum building height. The breach to the FSR control is considered minor as it is confined within the existing structures.

A variation to the strict application of the FSR standard is considered appropriate for the subject site as:

- The objectives of the MLEP2013 FSR control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R3 Medium Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation (given the existing scale of Pittwater Road, the existing building footprint on the site and precedence through other sites approved with a variation).

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgement in the *NSW Land and Environment Court Case Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* by the Chief Judge Preston and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.4(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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 Secretary before granting concurrence.*

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.4(2) Floor Space Ratio

4.6 Exceptions to development standards

(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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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,*
- (ca) clause 6.15,*
- (cb) a development standard on land to which clause 6.19 applies.*

Comment: As detailed previously in this request, Clause 4.6 of MLEP2013 is applicable to enable a variation to the Floor Space Ratio to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the FSR control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.4 Floor space ratio

(1) The objectives of this clause are as follows—

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent

authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Comment: It is acknowledged that the proposed development does not comply with clause 4.4 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.4 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.4 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Floor Space Ratio as a floor space referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.4 (2) states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

The Floor Space Ratio Map sets a maximum FSR control of 0.6:1. For the purpose of calculating FSR, the MLEP2013 provides the following definition:

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.

It is proposed to provide 166.06sqm of GFA on the site which has a site area of 215.3sqm. This equates to an FSR of 0.77:1, representing a 22% variation to Councils standard.

The Floor Space Ratio in clause 4.4(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions 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:

(d) the cubic content or floor space of a building,

Despite the variation to the floor space ratio control which occurs as a result of the small lot size, the proposed alterations and additions are considered to be in keeping with the desired future character of the locality. The proposed first floor additions are sited 5.2m from the front boundary of the existing dwelling, therefore the alterations and additions will not result in any unreasonable visual impact on the Pittwater Road streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.

Objection to Development Standard – Floor Space Ratio (Clause 4.4(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council at [42] and [43]*.

Comment: Clause 4.6(3)(a) of the MLEP2013 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is ‘*unreasonable or unnecessary in the circumstances of the case*’.

In determining a merits based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Manly precinct. As noted under the review of Clause 4.4 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.4, as outlined below:

- The proposal is consistent with the existing and desired streetscape character. As previously noted, the immediate area has a variety of property types ranging in scale from one storey to three storeys.
- The proposal is retained behind the front building line which is already two storeys in scale, therefore no impact to important landscape or townscape features.
- As per above, the prevailing façade is two storeys in scale, therefore no impacts to the visual relationship between new developments and the existing streetscape of the area.
- The proposal has been strategically located within the existing building footprint, with no increase impacts on the user enjoyment of adjoining land and the public domain. The proposal retains and enhances the existing landscaping and functionality of the site.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, heritage conservation values and the privacy and solar values for adjoining neighbours.
- The site falls under MDCP control 4.1.3.1 Variation to FSR for undersized lots.
- The proposal has also been designed with regards to the development consent granted for 128 Pittwater Road, Manly, which also had a variation to the FSR control

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation. Given the building footprint does not change through this application the permissible FSR control does not align with the permissible height on the site, nor several built form controls of the MDCP2013. This essentially limits any redevelopment potential of the site without varying Councils FSR standard.

2. The underlying objective or purpose of Clause 4.4 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: The underlying objective and purpose of Clause 4.4 is not relevant as the existing building breaches existing controls for the site. The proposal has been designed within the existing building footprint which should allow for a greater FSR for the site. The project architects have also skilfully designed the alterations to be located within existing structures which enhance the building and maintain the visual appearance by retaining the existing front façade.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of relatively minor works to the existing building as the development does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed within the existing building footprint.

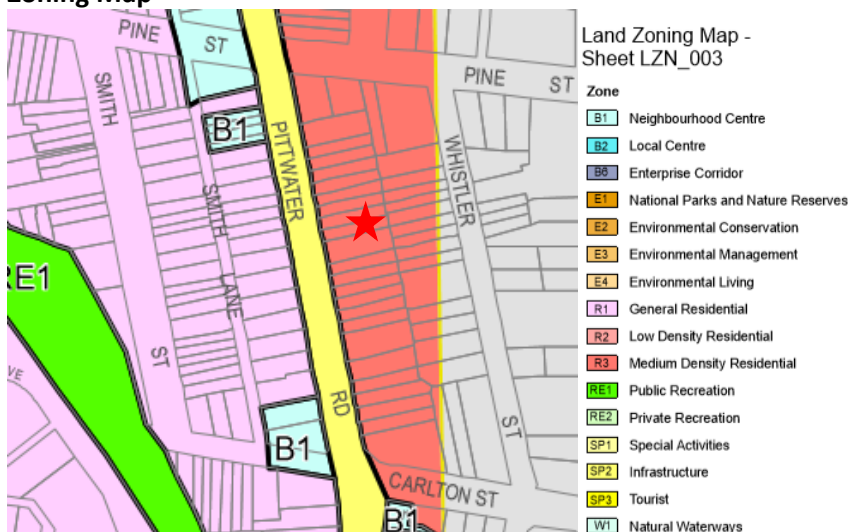
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

Comment: Whilst the proposal seeks a variation to Councils numerical FSR standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments (in particular 128 Pittwater Road, Manly) within the immediate area and approvals granted for this site show that the development standard for FSR has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Map



Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Service stations; Shop top housing; Signage; Take away food and drink premises; Tank-based aquaculture; Tourist and visitor accommodation; Water recycling facilities; Water supply systems

4 Prohibited

Advertising structures; Farm stay accommodation; Pond-based aquaculture Water treatment facilities; Any other development not specified in item 2 or 3

Comment: The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

Objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The site is zoned R3 Medium Density Residential. A dwelling house is a permissible land use, therefore any alterations and additions are permissible with Council's consent. The proposed alterations and additions are consistent with the objectives of the zone, as supported below:

- The proposal retains the dwelling house which in turn provides for the housing needs of the community with the R3 Medium Density Residential zone.

- The proposal retains the dwelling house which provides a variety of housing types in the immediate precinct.
- The proposal encourages the revitalisation and rehabilitation of the existing site which is run down and in need of new facilities to bring it in line with the needs of the residential area – i.e. a four-bedroom house.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”

Comment: As detailed above, there are sufficient environmental planning grounds to justify the proposed variation to the MLEP2013 FSR control. Further justification to support the proposed variation is provided below:

- The proposed development is for a minor increase to the existing GFA within the parameters and building footprint of the existing structures, which have set the ground rules for the bulk, scale and mass of the proposal with no breaches to the existing building footprint or height.
- The LEC planning principles on FSR relate to compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

- Are the proposals physical impacts on the surrounding development acceptable?

- Is the proposals appearance in harmony with the buildings around it and the character of the street.

In addressing the above planning principals, the benefits of the first-floor addition, represents a new functional design which enhances the internal amenity of the dwelling. Not only does this provide improved amenity for the occupants of the building, it complies with the objectives of the zone.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The design proposed represents an increase in GFA which is minor and within the existing building footprint
- The site is constrained due to the small width and lot size. The proposed alterations and additions have been strategically located to retain privacy and solar access to neighbouring properties.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.
- The proposal is consistent with other approved developments within the adjoining precinct such as 128 Pittwater Road, Manly.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council’s objectives for this precinct in regards to the R3 Medium Density Residential zone.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.

A further review of the solar access and amenity to the southern neighbour at 120 Pittwater Road, Manly, is provided below:

As demonstrated in the shadow diagrams prepared by Action Plans, the proposal will not result in any adverse overshadowing impacts to the adjoining neighbours. The shadow impacts to the neighbours are consistent with the existing impacts, in particular to the south, and are acceptable for the following reasons:

- The dwelling house complies with the maximum building height requirements as prescribed under Clause 4.3 of the Manly Local Environmental Plan 2013;
- The neighbouring dwellings will retain the minimum number of hours of direct solar access to the rear private open spaces.
- It is also noted that the southern neighbours ground floor northern elevation windows are blocked by vegetation and the first floor enclosed balconies.

The adjoining site is an overdevelopment and was approved through the L&E Court and subsequent modifications through council. Our clients land should not be impacted by decisions that did not assess the impacts of our land and building structures existing. The project architects have strategically designed the project to have minimal adverse impacts while retaining existing structures, being cost effective and designed to the narrow width of the site.

The elevational shadow diagrams show additional shadow impacts to that existing on the neighbour's northern elevation at 120 Pittwater Road, Manly. We query whether there is an increase shadow impact to the ground floor with existing landscaping (we would assume as per approved plans) which already blocks any significant sunlight to the ground floor windows. This is not shown on the elevational diagrams as they are not a fixed structure but should be strongly considered when determining the application.

The ground floor impact relates to the small increase of height to the sunroom and deck. Even with a compliant setback there would be an impact due to the constraints of the area and the small nature of the sites. It is noted that the maximum building height for the ground floor portion (eastern elevation) is 3.5m. Refer to elevational shadow plans prepared by Action Plans for full details. A photograph of existing vegetation along the boundary is shown on the next page:



Existing Landscaping

Photograph of the side boundary between 122 and 120 Pittwater Road, Manly. The photograph was taken at 9am on 11th May 2020 and show the vegetation which impacts sunlight to the ground floor windows along with screening and pergola structures which impact the first floor windows existing.

The elevational shadow diagrams show there is an increased impact to the first floor. It is noted that sufficient sunlight is still achieved to the site in general with some windows retaining adequate access to sunlight throughout the day. The adjoining neighbour has constrained itself by screening balconies and covering ground floor windows with popped out balconies and landscaping.

It is important for Council to note that the existing southern elevation of our client's site is built on boundary and the existing landscaping on the adjoining neighbours land which impacts the access of sunlight to the ground floor windows. Any potential impacts will be minor and do not adversely impact the rear (eastern) part of the southern neighbour and private open space. The proposal retains full sunlight to the private open space of the adjoining neighbour and retains adequate access to sunlight on the northern elevation.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.4(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the existing building and the proposed new parts which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Floor Space Ratio. The proposal has been skilfully designed within the existing building footprint and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of FSR applicable to this site. Additionally, the building improvements add significant social and healthy benefits through a new functional design. Council should encourage such building upgrades via support of positive intention to upgrade old residential buildings within the Northern Beaches LGA.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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 Secretary before granting concurrence.

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the FSR development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.4(2) Floor Space Ratio and this statement verifies that compliance with the provisions of clause 4.4(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

1(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the strict application of Council's Floor Space Ratio development standard is considered appropriate for the site at 122 Pittwater Road, Manly. The variation to FSR is isolated and retained within the existing building footprint.

This development proposes a departure from the maximum floor space ratio development standard, with the proposal to provide an FSR of 0.77:1, or 0.664:1 based on a lot which complies with the minimum lot size.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The proposal is consistent with the existing and desired streetscape character. As previously noted, the immediate area has a variety of property types ranging in scale from one storey to three storeys.
- The proposal is retained behind the front building line which is already two storeys in scale, therefore no impact to important landscape or townscape features.
- As per above, the prevailing façade is two storeys in scale, therefore no impacts to the visual relationship between new developments and the existing streetscape of the area.

- The proposal has been strategically located within the existing building footprint, with no increase impacts on the user enjoyment of adjoining land and the public domain. The proposal retains and enhances the existing landscaping and functionality of the site.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, heritage conservation values and the privacy and solar values for adjoining neighbours.
- The site falls under MDCP control 4.1.3.1 Variation to FSR for undersized lots.
- The proposal has also been designed with regards to the development consent granted for 128 Pittwater Road, Manly, which also had a variation to the FSR control
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Floor Space Ratio, the R3 Medium Density Residential zoning objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Floor Space Ratio Clause 4.4(2) is acceptable and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. The variation under Clause 4.6 is to vary the Floor Space Ratio control to give Northern Beaches Council the power to grant development consent to the proposed development.