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The General Manager
Northern Beaches Council

Via Email

Nicole Lennon (btp) Principal

Planik Pty Ltd
ABN 74 164 697 036
PO Box 577, Gymea NSW 2227

Mobile: 0402 407 841
Email: nik@planik.com.au
planik.com.au

Dear Sir/Madam

Clause 4.6 Request to vary the Maximum Height of Buildings Control Clause 4.3 of Manly LEP 2013 – Alterations & Additions to terrace at 23 Beatrice Street, Clontarf

Introduction

This 4.6 variation is to be read in conjunction with the amended architectural plans prepared by MM Architects (Rev A 14 08 25) prepared as part of a Development Application for the proposed alteration and addition to the existing terrace on the subject site. As a summary it is noted that:

- the maximum height of the building already stands at 12.96 m (R.L. 57.160) from the excavated ground level (under slab).
- It is noted that the height plane was previously only penetrated by the second-floor balcony and stair void but that the excavated floor plates now create a larger “by definition” height exceedance.



Figure 1 Extract from Council's Pre DA advice (PLM 2025/ 0080) providing insight into the predevelopment height plane.

- The over height component includes the construction of a non-reflective solid roof over an otherwise open structure at a height of 12.96 m. The height is measured as follows R.L 57.16 terrace roof and R.L 44.2 Ex Ground Level (200 mm under slab).
- The additional over height component is restricted to 6.64 m x 6.27 m of extended terrace roof form and associated glass balustrades.
- It is noted that the built form is below street level which is R.L 58.56
- Refer to height penetration plan below that reveals the extent of the existing variation and the proposed roof structure and balustrade in black.

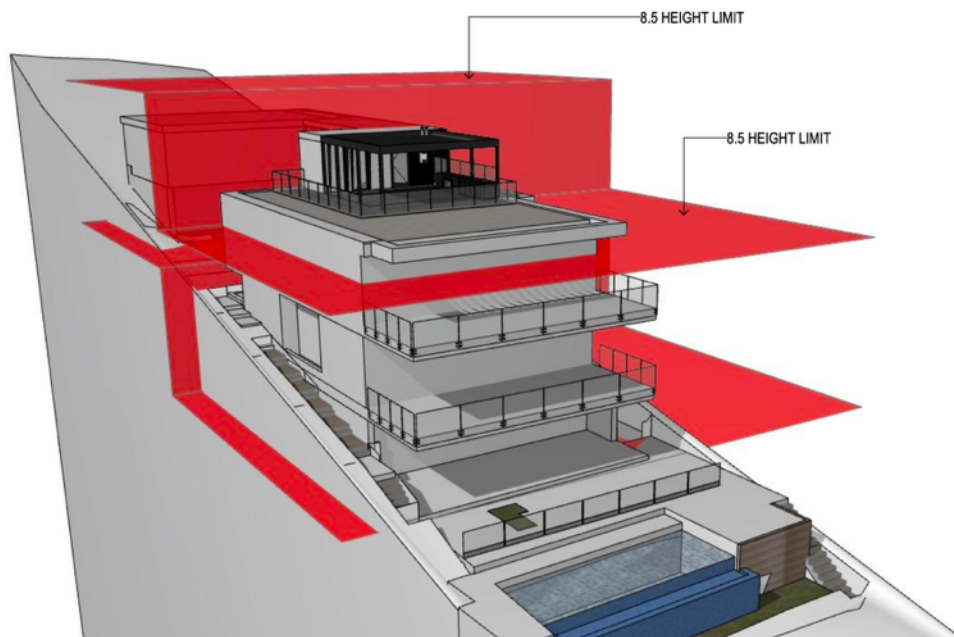


Figure 1: Height plane penetration plan

This variation request has been composed with attention to the revisions to Clause 4.6 which included:

- retain the existing 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests in clause 4.6(3)
- require the applicant and consent authority to consider the same tests, retained in clause 4.6(3)
- require the consent authority to be satisfied that the matters in clause 4.6(3) have been demonstrated
- remove the need for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone – this will avoid duplication of tests and matters for consideration covered by other relevant statutory provisions
- remove the Planning Secretary's concurrence requirements, replacing them with a new monitoring and reporting framework.

This variation also tests the proposal against one of the five methods outlined in the LEC case *Wehbe V Pittwater Council* (2007)



Figure 1: Site Location

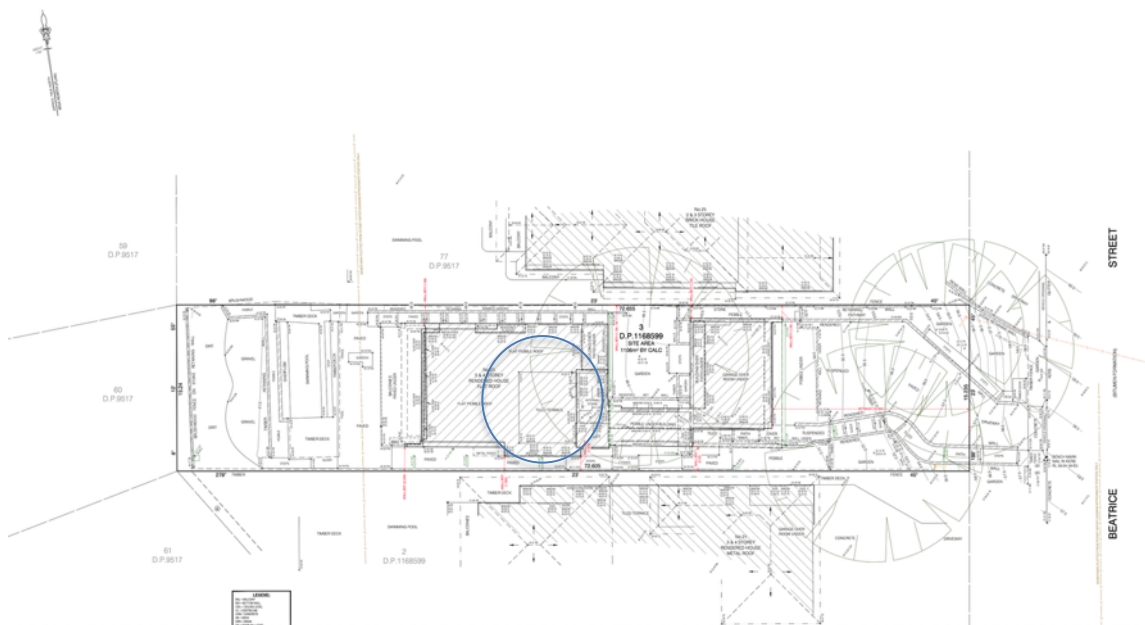


Figure 2: Survey noting spatial arrangement of built forms and location of terrace

The existing site has an approximate 15 metre slope from street to rear boundary. This slope and previously excavated lower floor level, causes the upper extent of the existing second floor and the terrace above to penetrate the height plane.

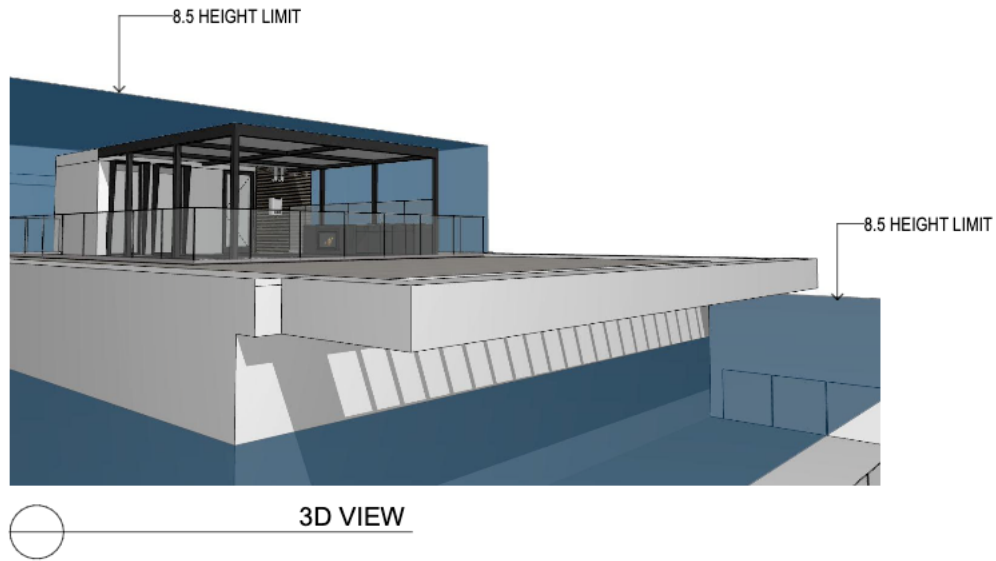


Figure 3: 3D View with Height plane exceedance exposed

The largest varying element is located more central to site and south of the built form; however, it remains no higher than the garage parapet behind which is well under the maximum height line at that point. The proposed terrace roof is an extension of an existing covered entry landing.



Figure 4: Blue Arrow indicates where terrace roof extends no higher than the existing garage roof

The development standard Height in clause 4.3 of the MLEP 2013 may be varied under clause 4.6 “Exceptions to development standards” of the LEP.

Clause 4.3 of the MLEP 2013 contains objectives for the height of buildings development standard, with Clause 4.3(2) providing an 8.5m height standard for development in the R2 zone.

4.3 Height of buildings

(1) The objectives of this clause are as follows: (strike through those not relevant)

(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 conservation 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.

Height Statistics

Under clause 4.3 the proposal has a prescribed maximum height of 8.5m. The proposed variation is described as follows:

- The existing maximum height is 12.96 m from previously excavated ground level.
- The proposed maximum height is 12.96 m
- This strictly represents 52% variation to the height standard
- However, an extrapolated original / pre excavation ground line would have the height at ~10.94 m (28.7%)

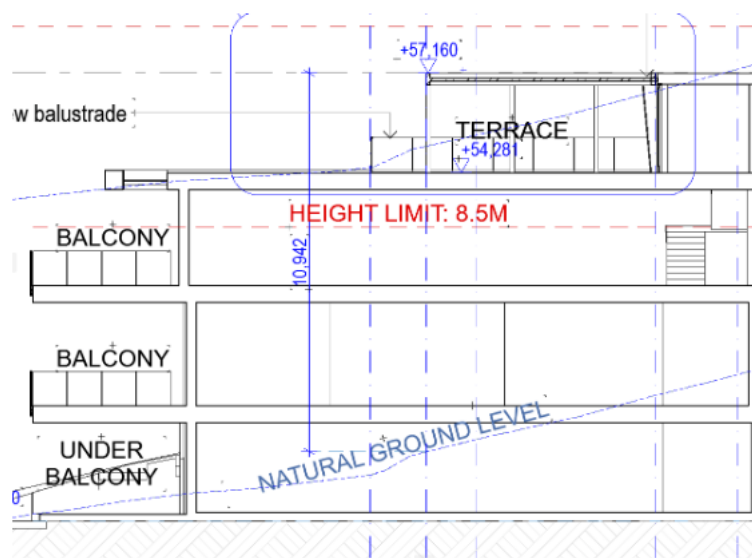


Figure 5 – Proposed Section with dimension of height from extrapolated NGL

Assessment of the Provisions of Clause 4.6 Exceptions to development standards

Clause 4.6 of the MLEP 2013 allows for flexibility to be applied to development standards where objectives can be obtained notwithstanding the variation. The mechanics of the clause, the objectives of the height of buildings standard and a response are all outlined below.

Clause 4.6.3 (a)(b) - Unreasonable or Unnecessary / Environmental Planning Grounds

Commentary provided below to address the requirements of this clause.

Table 1 Request to vary development standard 4.3 Building Height

Objective	Comment
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and NOTE: In this regard, Wehbe outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable by establishing: i) compliance with the underlying objectives of the standard being breached notwithstanding the numerical non-compliance ii) that the objectives of the standard are not relevant to the proposal iii) requiring compliance with the standard may thwart the achievement of the objectives of that standard iv) that the standard has been virtually abandoned by the Council or v) the zoning of the land is not appropriate for the site and therefore the standard is not appropriate.	This justification does not rely on pathways 2 – 5 at left. It is argued here that the relevant objectives of the height standard are met by the proposal in that: Objective 1(a) is achieved by the proposal. The objective relates to topographic landscape, prevailing building height and desired future character of the streetscape in the following ways: 1. the varying element is central to the site and occurs due to the topography dropping away to the rear, the proposed terrace roof extension matches the height of the existing garage and lift lobby roof 2. From the street, the extended terrace roof will be only marginally visible but will be dark and non-reflective. 3. The character of the streetscape is maintained as the terrace will be basically imperceptible from the street. The proposal achieves objective b) relating to bulk and scale given that: 1. In response to Pre-Da advice from Council, the terrace roof addition has been pulled back from the northern façade of the building to reduce any visual and privacy impacts to the neighbour at No.25 where there are windows from that southern façade over looking No. 25. The setting of the proposed roof towards the south of the of form inclusive of semi opaque 1500mm splashback element to BBQ ensures both visual and acoustic privacy to No. 21. The recessed element respects the scale and form of the neighbouring dwellings to north and south. 2 The dark, open materiality will be visually recessive. Moreover, as the dwelling has been carefully sited around an existing eucalyptus tree (see below), its canopy provides a natural backdrop to the entry level, and any terrace elements will be integrated within a landscaped setting.

Objective	Comment
	 The proposal achieves objective c) relating to minimising impacts on views given that: 1. Views from the site and neighbouring sites are elevated and extensive towards the west. All significant views will be maintained to neighbours and cross views will still be available over the terrace. A visual impact study has been prepared and presented in the Architectural set and demonstrates views of the terrace can only be obtained looking across the site and loss of water views and or outlook will not result from the proposal. The proposal achieves objective d) relating to solar access to public and private open spaces as well as habitable rooms of adjacent dwellings. 1. the proposal includes an open roof structure and amended paved areas which will be to the south of neighbour at No. 25 and therefore there will be no solar impact to that dwelling. 2. The roofed structure will cast some acceptable additional shadows predominantly to the existing roof of No.21 noting that No. 21 is set below No. 23.

Objective	Comment
	Afternoon sun to the western facades of No. 21 will not be inhibited. Refer to shadow plans Objectives e) is not applicable to this site.
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	The primary environmental planning grounds to justify the variation is the topography of the site and previous excavation of the lower ground level. This causes the existing terrace to be over height, however, the proposed terrace roof will sit comfortably within the context of the existing built form and surrounding forms.

Objective	Comment
	The additional over height element has been located central to the site and to the south of the building, will not cause unsatisfactory visual impacts to neighbours and will read as compliant from the street. The proposal leverages the existing building footprint to enhance the dwelling's entry statement and create a functional, usable space at this level. The open form of the terrace roof does not create any GFA above the height line but allows for a larger space to enjoy elevated views of the waterway. The extended terrace area is modest in scale, noting that a large area of the roof remains non-trafficable. The proposal maintains comfortable setbacks from façade edges and boundaries to mitigate visual and noise impacts on neighbouring properties. Refer to shadow diagrams that demonstrate solar impacts are negligible from this proposal.

Conclusion

The proposed application remains consistent with the objects of Part 1.3 and requirements of Part 4 of The Act. The proposed works are permissible with consent and the element that penetrates the height plane is no higher than the existing garage and lift lobby on the site.

The proposal will not create amenity impacts or visual bulk and scale impacts from any viewpoint.

The proposal will create a development that:

- Will be compatible with its context and the R2 Low Density zone
- Does not impact the natural environment
- Preserves solar access, with additional shadows cast predominantly across the roof of No.21 Beatrice Street.
- Provides a more useable terrace area with a weatherproofed section.
- Respects the site boundaries and is appropriately setback to ensure visual and acoustic privacy is maintained for neighbours.

The proposal responds to the character of the locality, with a built form that complements the existing architecture. The variation reflects the site's topography, ensuring the resulting form is consistent with surrounding development.

Yours Faithfully,



Nicole Lennon Director Planik Pty Ltd