

## APPENDIX 3

### CLAUSE 4.6 TO CLAUSE 4.4 and 4.4A OF MOSMAN LEP 2012 EXCEPTIONS TO DEVELOPMENT STANDARDS – **FLOOR SPACE RATIO (FSR)**

*Alterations and additions to the existing dwelling house*

29A PARRIWI ROAD, MOSMAN

PREPARED BY

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**MOSMAN LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 variation request has been prepared to accompany the development application for the alterations and additions to the existing dwelling house at 29a Parriwi Road, Mosman. This variation is associated with Rev C Plans, dated 4 February 2022.

Clause 4.6 of the Mosman LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

**Development Standard to be Varied**

This Clause 4.6 variation is submitted in relation to the proposed FSR variation to the development standard under Clauses 4.4 and 4.4A with the clauses reproduced below:

**4.4 Floor space ratio**

- (1) *The objectives of this clause are as follows—*
- (a) *for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—*
    - (i) *to ensure that buildings are compatible with the desired future character of the area in terms of building bulk and scale, and*
    - (ii) *to provide a suitable balance between landscaping and built form, and*
    - (iii) *to minimise the adverse effects of bulk and scale of buildings,*
    - (iv) *to limit excavation of sites and retain natural ground levels for the purpose of landscaping and containing urban run-off,*
  - (b) *for development on land in Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B6 Enterprise Corridor, to ensure that buildings are compatible with the desired future character of the area in terms of building bulk and scale,*
  - (c) *for development on land in Zone B2 Local Centre or Zone B6 Enterprise Corridor, to provide opportunities for buildings of a greater scale than existing development in suitable locations to achieve the Council's residential strategy and provide opportunities for economic growth.*
- (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](#).*

**4.4A Area 1—floor space ratio**

*Despite clause 4.4 (2), the maximum floor space ratio for a building on land shown within “Area 1” on the Floor Space Ratio Map is—*

- (a) *if the site area is less than or equal to 700 square metres—0.5:1, and*
- (b) *if the site area is greater than 700 square metres—0.5:1 for 700 square metres and 0.4:1 for the remaining area.*

The land is located within ‘Area 1’, and therefore a development standard of 0.5:1 applies. The proposed FSR of 0.52:1 exceeds the FSR standard of 0.5:1 by 0.02:1 or 12sqm, as shown by the area calculation below:

|                 |                     |
|-----------------|---------------------|
| SITE AREA       | 500.2m <sup>2</sup> |
| PERMISSABLE FSR | 0.5:1               |
| PERMISSABLE GFA | 250.1               |

### **PROPOSED GROSS FLOOR AREA**

|                    |
|--------------------|
| GROUND FLOOR       |
| FIRST FLOOR        |
| SECOND FLOOR       |
| TOTAL PROPOSED GFA |
| TOTAL PROPOSED FSR |



### **EXISTING GROSS FLOOR AREA**

|                    |                   |
|--------------------|-------------------|
| GROUND FLOOR       | 46m <sup>2</sup>  |
| FIRST FLOOR        | 73m <sup>2</sup>  |
| SECOND FLOOR       | 89m <sup>2</sup>  |
| TOTAL EXISTING GFA | 208m <sup>2</sup> |
| TOTAL EXISTING FSR | 0.42:1            |

### **Clause 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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

### **Justification for Contravention of the Development Standard**

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

**Assessment:** It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances because the objectives of the development standard are achieved notwithstanding non-compliance with the standard:

- i. The variation is limited to only 12sqm/0.02:1.
- ii. The majority of the dwelling is concealed from the public domain, being largely imperceptible from both sides of Parriwi Rd. Only the upper level recessed behind the remodelled carport would be primarily evident from the public domain. On this basis, the extent of FSR variation/built form on the site would be indiscernible.
- iii. The dwelling cannot also be seen from the nearby street to the north of the site, which provides access to the rear of the site. The dwelling is not evident from James Street to the north due to the siting of the substantially larger dwelling to the immediate north of the site at 29B Parriwi Rd.
- iv. The extensions towards the rear of the built form are not readily visible from any primary public or private vantage points due to the orientation of neighbouring dwellings on either side and to the rear, towards the coast/harbour east. Furthermore, the dense vegetative screen along the rear boundary and the difference in topography makes the extended built form indiscernible.
- v. The additional FSR is discreetly provided by extending the glass line over three levels, noting that the extended glass lines remain within the existing protruding side masonry walls. Therefore, the extended internal areas will not be evident from either side or from the rear. The extension of the built form within the existing void at the front of the dwelling, noting the existing upper-level area, extends out over the location of the music room below. The extension will be sited below street level. It will not cast any shadows to any primary living or private open space areas, noting the southern neighbour at 29 Parriwi Rd has a largely blank north-facing wall with only non-habitable openings along its northern elevation.
- vi. Neither the extensions (nor the additional associated FSR) at the front, rear or

below the existing house generate any additional view impacts beyond that existing.

- vii. The additional GFA beyond that permitted does not generate any adverse shadow impacts as the additional built form is largely contained within the existing footprint of the dwelling.
  - viii. The additional FSR does not alter the physical presence of the dwelling when viewed from the public domain and surrounding properties.
  - ix. No objections have been raised in relation to the additional FSR from any surrounding neighbour.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

| Consistency with the objectives of the height standard zoning in the LEP   |   |
|--|---|
| Objectives   | Assessment  |
| <p><b>4.4(a)</b> for development on land in Zone R2 Low-Density Residential or Zone R3 Medium Density Residential—</p> <p>(i) to ensure that buildings are compatible with the desired future character of the area in terms of building bulk and scale, and</p> | <p>(i) Compatibility</p> <p>The desired future character of the area is fixed by the built form controls in the LEP and the existing built form, particularly on the eastern side of Parriwi Road.</p> <p>The dwellings on the eastern side of Parriwi Road respond to the steeply sloping topography and have varied setbacks to the neighbouring lots. The immediate neighbours have small side setbacks and present as 3-4 storeys in height to the east and generally 1-2 storeys to the street.</p> <p>The proposed FSR variation will not generate any inconsistency with the desired future character. The dwelling will appear subservient in the streetscape when compared with neighbouring dwellings and envisaged by the controls. In this regard, it is noted that the dwelling presents to Parriwi Rd as single storey whilst the height limit envisages a 2-storey height limit.</p> <p>The bulk and scale of the dwelling will also appear similar to that of the existing dwelling noting that the additions are confined to infilling of an existing double-height void area within the north-western portion of the dwelling and the minor extension to the rear of the existing rooms over 3-storeys. Such areas are discreet when viewed from both</p> |

|   |   |
|---|---|
| <p>(ii) to provide a suitable balance between landscaping and built form, and</p> | <p>sides of Parriwi Rd and when viewed from neighbouring properties.</p> <p>The additional FSR can be considered to be contained within the lower ground floor level, noting that the additional FSR beyond that permitted is only 12sqm.</p> <p>The minor and discreet nature of the FSR variation ensures that it will not generate any inconsistency with the desired future character.</p>  |
| <p>(iii) to minimise the adverse effects of bulk and scale of buildings,</p>      | <p>(ii) Landscaping and built form</p> <p>The proposed built form will appear within a landscaped setting, noting that the proposed built form will be set behind substantial landscaped gardens within the front and rear setbacks, consistent with the pattern of development on Parriwi Road.</p> <p>It is reiterated that the built form (inclusive of the FSR variation) is modest in the streetscape whilst it also does not generate any adverse visual bulk impacts to surrounding areas.</p> <p>The high-quality landscape plan enhances the existing extent of the landscaping on the site and suitably softens the appearance of the built form, notwithstanding the 12sqm variation.</p>  |
| <p>(iii) to minimise the adverse effects of bulk and scale of buildings,</p>      | <p>(iii) Minimise adverse effects of the bulk and scale</p> <p>The additional FSR beyond the FSR standard is only 12sqm, whilst the additional FSR beyond that which exists is provided within the FSR limit. Such additions occur within the building footprint/envelope being set within or below the existing outer envelope. In this regard, it is reiterated that the minor extensions to the rear are confined within the outer rear setback and are set behind the existing masonry blade walls. The other primary component of the additional FSR is contained within the undercroft/void space below the existing upper-level study. These elements do not generate any unreasonable bulk and scale impacts to the streetscape or any surrounding properties.</p> <p>To the extent that the music room addition may be seen from 29 Parriwi Road, it is from a lower stair and is visible at a location where there is a 1.4m setback to the wall. The area in front of the music room will be improved by</p> |

|   |  |
|---|--|
| <p>(iv) to limit excavation of sites and retain natural ground levels for the purpose of landscaping and containing urban run-off,</p>  | <p>landscaping which will provide an amenity to 29 Parriwi Road and partially screen the bulk of the built form. Whilst it is not determinative of the matter, it is noted that 29 Parriwi Road have not objected to the proposal.</p> <p>The subtle siting of the proposed FSR variation also avoids any adverse shadow, privacy or view impacts.</p> <p>(iv) Limit excavation</p> <p>The proposed additional FSR does not generate any inconsistency with the objective as the proposed FSR variation does not generate any significant excavation noting that the additional built form in the southwest corner of the site responds to the sloping topography and minimises excavation.</p> <p>The other excavation impacts are limited to areas of GFA which are partially below ground but do not compromise compliance with the landscape and setback requirements.</p> <p>On this basis, the proposed FSR variation does not compromise the achievement of the objectives of the FSR standard as the proposal:</p> |
| <p><b>4.4(b)</b> for development on land in Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B6 Enterprise Corridor, to ensure that buildings are compatible with the desired future character of the area in terms of building bulk and scale,</p>   | <p><b>Not applicable</b> – The subject site is located in the R2 Low-Density Residential zone</p>  |
| <p><b>4.4(c)</b> for development on land in Zone B2 Local Centre or Zone B6 Enterprise Corridor, to provide opportunities for buildings of a greater scale than existing development in suitable locations to achieve the Council's residential strategy and provide opportunities for economic growth.</p>   | <p><b>N/A</b></p>  |
| <p><b>4.4A(a)</b> if the site area is less than or equal to 700 square metres—0.5:1, and</p>  |  |
| <p><b>4.4(b)</b> if the site area is greater than 700 square metres—0.5:1 for 700 square metres and 0.4:1 for the remaining area.</p>   |  |
| <p><b>Consistency with the objectives of the R2 Low-Density Residential zone</b></p>  |  |
| <p><b>Objectives</b></p>  | <p><b>Assessment</b></p>   |
| <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low-density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To retain the single dwelling character of the environmentally sensitive residential areas</li> </ul> | <p>The discreet and minor nature of the FSR variation ensures that the variation does not generate a development that would appear out of character in the streetscape or out of character with the desired future character (as identified above).</p> <p>The single dwelling character of the dwelling</p>   |

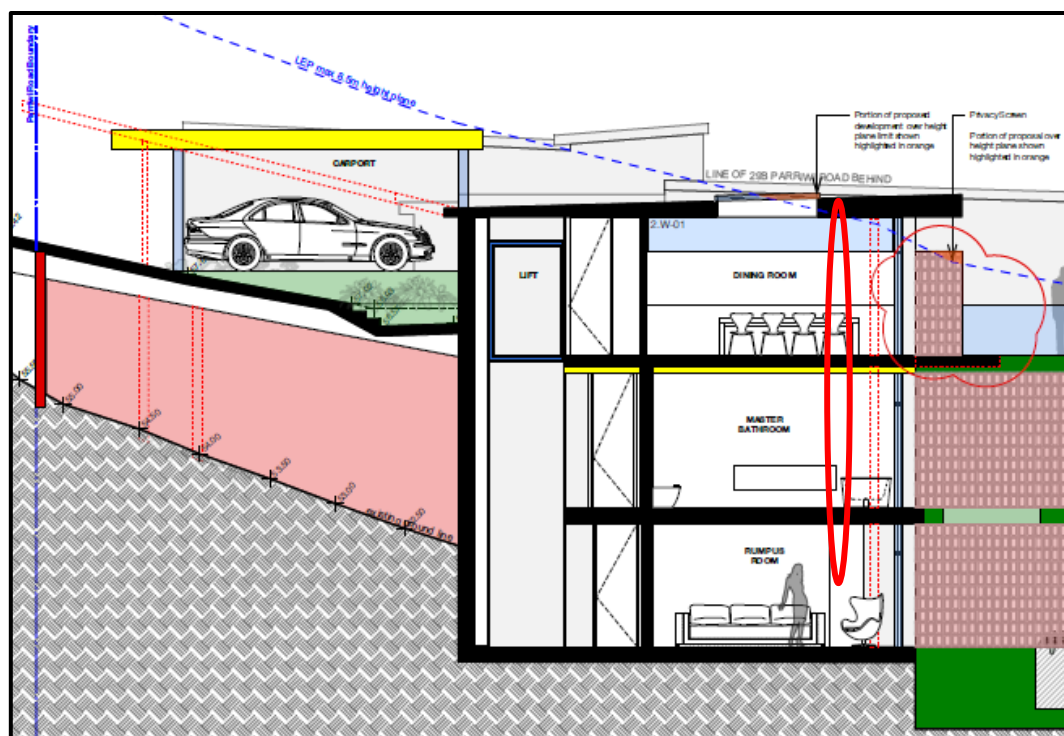
|   |   |
|---|---|
| <p>of Mosman.</p> <ul style="list-style-type: none"> <li>• To maintain the general dominance of landscape over built form, particularly on harbour foreshores.</li> <li>• • To ensure that sites are of sufficient size to provide for buildings, vehicular and pedestrian access, landscaping and retention of natural topographical features.</li> <li>• To ensure that development is of a height and scale that seeks to achieve the desired future character.</li> <li>• To encourage residential development that maintains or enhances local amenity and, in particular, public and private views.</li> <li>• To minimise the adverse effects of bulk and scale of buildings.</li> </ul> | <p>will be retained.</p> <p>The appearance of the dwelling from the harbour will not generate any adverse visual bulk impacts.</p> <p>The extent of change to the existing built form in terms of FSR is minimal when viewed from the streetscape or from neighbouring dwellings.</p> <p>The proposed FSR is also associated with a dwelling in a landscape setting. By locating the majority of the additional floor space in the undercroft spaces of the existing dwelling, the proposal is able to retain the existing character of the dwelling in a landscaped setting, albeit the landscaping will be upgraded.</p> <p>On this basis, the proposed FSR does not generate any inconsistency with the zone objectives.</p> |
|---|---|

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard*

**Assessment:** The minor, discreet and inconsequential nature of the FSR variation is considered to constitute a sufficient environmental ground.

The additional FSR of 12sqm beyond that existing could be attributed to the rear extension over the existing three levels and part of the storeroom, which has been increased in area to provide a floor. Such additional FSR is discreetly provided inside the two masonry blade walls within the outer rear building envelope and in subfloor space for the storeroom. The FSR beyond the FSR standard thereby does not generate any adverse or perceptible streetscape, visual bulk, view, shadow or privacy impacts.



**Figure 1: Section excerpt which shows the discreet and minor nature of the FSR extension within the existing building envelope (as annotated by the red outline)**

The extended glass line to the rear will also not generate any adverse visual bulk or amenity impacts to the rear of the site, noting the rear glass line (as extended) remains substantially separated (25m) from the rear neighbour addressed to 2 James Street. Established dense screen planting within the western setback of that property and the lack of aspect of the dwelling at 2 James Street ensures that there is no aspect of the FSR beyond the development standard.

It is also noted that the additional FSR beyond the standard is provided within a compliant height (LEP) and below the existing overall roof height.

The additional floor space which exceeds the FSR is attributed to the fact that the applicant proposes to retain the existing structure. The design retains the internal stair by proposing alterations and additions to an existing dwelling. Its configuration adds to the FSR calculation as it has not been designed to optimally use the space. If the building were demolished and a new construction proposed, a more efficient floor plate could be accommodated to provide similar accommodation and comply with the FSR standard. The decision to instead make alterations and additions to the existing structure results in a better environmental planning outcome as there will be less wasted materials and less waste directed to landfill, and the construction will have less impact on neighbours due to the shorter build time.

On this basis, there are sufficient environmental grounds to sustain the variation in this instance.

There are sufficient environmental grounds to support the FSR variation in this instance on the above basis.

## **Other Matters for Consideration**

*4(a)(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*

**Assessment:** The above assessment demonstrates that the proposed height satisfies the objectives of the FSR standard and the R2 Low-Density Residential zone.

Furthermore, it is considered that the FSR variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed height variation allows for the orderly and economical use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*. The proposed FSR allows for the achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

Therefore, the proposed FSR is consistent with the State and Regional Policies, particularly urban consolidation principles, which seek to provide additional density near transport and established services.

*(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the FSR standard, given the limited amenity impacts associated with the development and the nil streetscape outcome that would arise from the FSR variation.

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above

**Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 29a Parriwi Rd, Mosman. It is requested to be looked upon favourably by the consent authority.