

APPENDIX 5

CLAUSE 4.6 TO CLAUSE 4.3A (4) OF MOSMAN LEP 2012 EXCEPTIONS TO DEVELOPMENT STANDARDS – **WALL HEIGHT VARIATION**

Alterations and additions to the existing dwelling house

29A PARRIWI ROAD, MOSMAN

PREPARED BY

ABC PLANNING PTY LTD

~~December 2021~~ February 2022

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 B Plans, dated 16 December 2021.

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.

~~This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.~~

Development Standard to be Varied

This Clause 4.6 variation is submitted in relation to the proposed wall height variation to the development standard under Clause 4.3A (4), with the clause reproduced below:

4.3A Height of buildings (additional provisions)

- (1) This clause applies to all land in a residential zone to which a maximum building height of 8.5 metres applies as shown on the [Height of Buildings Map](#).
- (2) The consent authority may refuse development consent for the erection of a building on land to which this clause applies if the building has more than two storeys above ground level (existing).
- (3) However, the consent authority may grant development consent for an additional storey in the foundation space of an existing building on land to which this clause applies if the consent authority is satisfied that the building height and bulk is of an appropriate form and scale.
- (4) **A building on land to which this clause applies must not have a wall height at any point of the building (other than at a chimney, gable end or dormer window) that exceeds 7.2 metres.**

It is noted that the same objectives apply to both the wall height and overall height development standards, that being an overall height limit of 8.5m and a wall height of 7.2m.

The objectives at clause 4.3(1)(a) are:

- ~~(i) to share public and private views, and~~
- ~~(ii) to minimise the visual impact of buildings particularly when viewed from the harbour and surrounding foreshores, and~~
- ~~(iii) to ensure that buildings are compatible with the desired future character of the area in terms of building height and roof form, and~~
- ~~(iv) to minimise the adverse effects of bulk and scale of buildings.~~

Extent of variation

In relation to wall height, ~~the bathroom and master robe wall additions to the southern elevation cause an exceedance to the wall height control, albeit those elements do not~~

Formatted: Font: (Default) Arial, 11 pt, Italic, Complex Script
Font: Arial, 11 pt, Italic

Formatted: Indent: First line: 1.27 cm

Formatted: Font: (Default) Arial, 11 pt, Italic, Complex Script
Font: Arial, 11 pt, Italic

Formatted: Indent: Left: 1.27 cm, Hanging: 1.27 cm

Formatted: Font: (Default) Arial, 11 pt, Italic, Complex Script
Font: Arial, 11 pt, Italic

Formatted: Font: (Default) Arial, 11 pt, Italic, Complex Script
Font: Arial, 11 pt, Italic

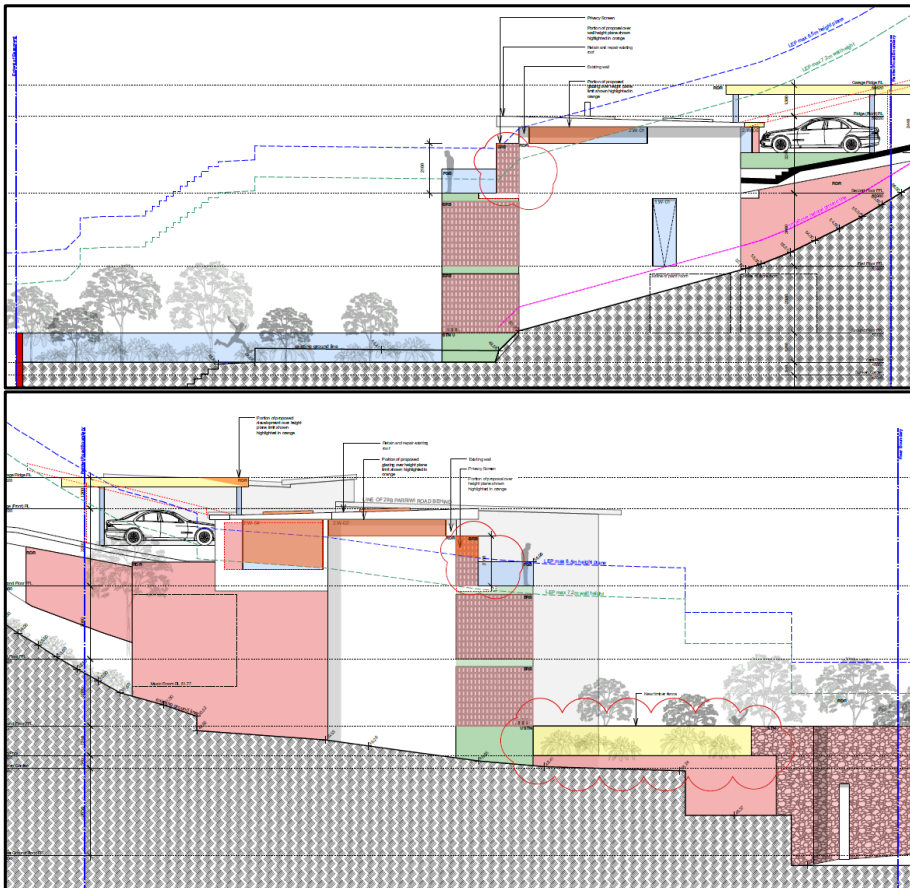
Formatted: Font: (Default) Arial, 11 pt, Italic, Complex Script
Font: Arial, 11 pt, Italic

Formatted: Indent: First line: 1.27 cm

increase the overall height of the building as they infill an existing void area. The privacy screen and balustrade to the second balcony have been included on a precautionary basis, however it is considered that they are not considered to be walls for the purpose of the definition of 'wall height' as they do not meet the underside of an eave or a flat roof. Further the eastern wall to the proposed second floor dining and lounge room has been relocated approximately 600mm to the east. The overall eave height does not change, it is considered that there are no new built form elements that breach the wall height. On this basis, it is considered that the elements which are above the 7.2m wall height control, including the carport, privacy screen and balcony balustrading at the rear of the site, do not meet the definition of wall height.

Formatted: Highlight

Therefore, the following assessment needs only address the built form components that breach the wall height, as per the definition. The elevations with reference to the wall height control is shown below.



Figures 1 and 2: Northern and southern elevation excerpts showing the wall height of the proposal, as shown by the green dotted line

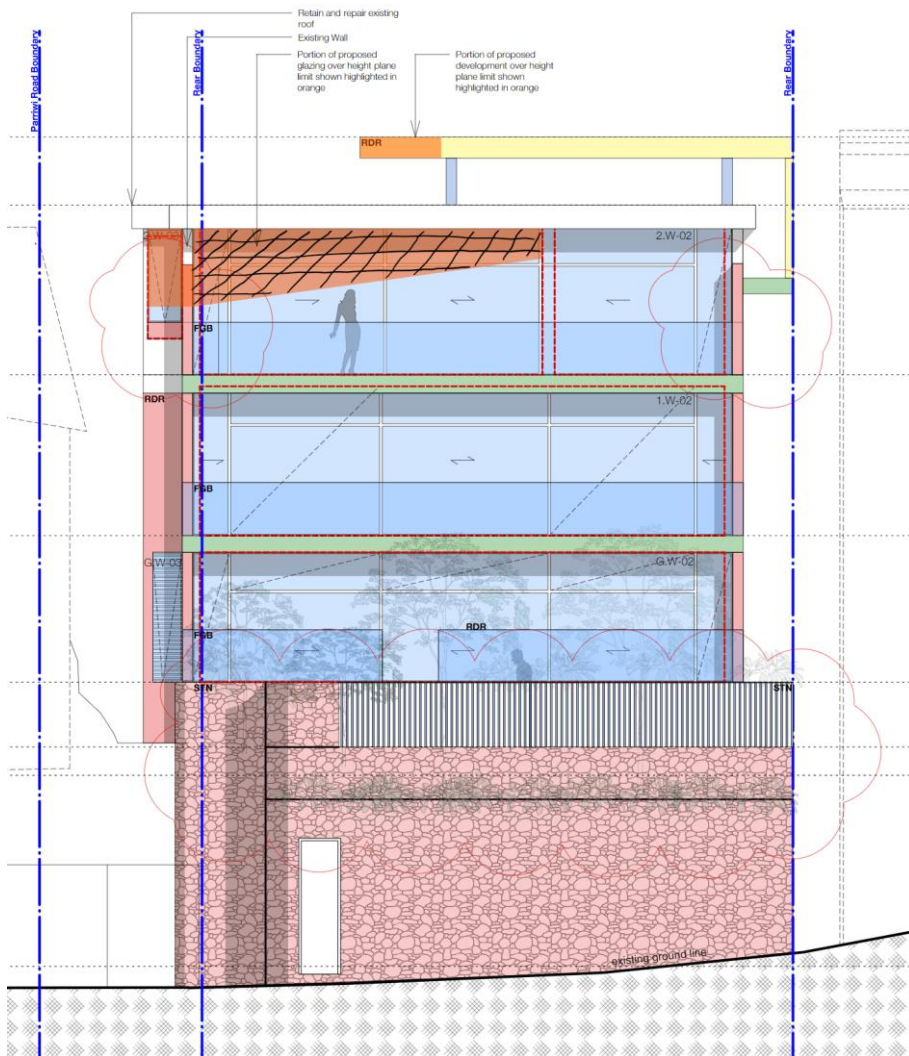


Figure 1a: eastern elevation with the area of the re-aligned glazing to the lounge and dining area over the wall height control marked as hatched black

Formatted: Highlight

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 height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

Streetscape

The wall height variation is limited to the existing dwelling, which is unchanged. On this basis, there are no streetscape impacts associated with the wall height variation.

Visual Bulk/Context

Given the height of the dwelling which contains the wall height variation is unchanged, the wall height variation is not responsible for any visual bulk impacts to any surrounding neighbour. The provision of new glazing elements in the form of highlight windows to the lounge and kitchen areas is considered to contribute to the increased articulation of the northern and southern elevations. The extended glass line elements which extend eastwards

occur within the external confines of the existing masonry blade walls. Therefore, such change to the built form is largely internal and does not generate any adverse visual bulk impacts. The extension of the glass line slightly towards the east/rear has no adverse visual bulk impacts noting neither side neighbour would be aware of the change whilst the neighbour to the rear has no aspect towards the rear of the dwelling. The rear neighbour is substantially separated, sited significantly lower than the site, has a dense screen of vegetation and no windows facing west towards the subject site. It is thereby confirmed that the wall height variation has no adverse visual impacts on any surrounding property.

Views

Given the height of the dwelling which contains the wall height variation is unchanged, the wall height variation is not responsible for any public or private view impacts.

Overshadowing

Given the height of the dwelling which contains the wall height variation is unchanged, the wall height variation is not responsible for any adverse shadow impacts.

Visual and Acoustic Privacy

Given the height of the dwelling which contains the wall height variation is unchanged, the wall height variation is not responsible for any visual bulk impacts to any surrounding neighbour. The provision of new glazing elements in the form of highlight windows to the lounge and kitchen areas is considered to contribute to the increased articulation of the northern and southern elevations. The extended glass line elements which extend eastwards occur within the external confines of the existing masonry blade walls. Therefore, such change to the built form is largely internal and does not generate any adverse visual bulk impacts. The extension of the glass line slightly towards the east/rear has no adverse visual bulk impacts noting neither side neighbour would be aware of the change whilst the neighbour to the rear has no aspect towards the rear of the dwelling. The rear neighbour is substantially separated, sited significantly lower than the site, has a dense screen of vegetation and no windows facing west towards the subject site. It is thereby confirmed that the wall height variation has no adverse visual impacts on any surrounding property.

- 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
4.3(a) for development on land in Zone R2 Low-Density Residential or Zone R3 Medium Density Residential:	The proposed wall height variation does not compromise the achievement of the objectives of the height standard as the proposal:
i. to share public and private views, and	i. It is reiterated that there is no increase to the existing overall wall height on the

<p>ii. to minimise the visual impact of buildings particularly when viewed from the harbour and surrounding foreshores, and</p> <p>iii. to ensure that buildings are compatible with the desired future character of the area in terms of building height and roof form, and</p> <p>iv. to minimise the adverse effects of bulk and scale of buildings,</p>	<p>site. Therefore, the existing wall height variation does not generate any inconsistency with this objective <u>and does not impede any public or private view.</u></p> <p>ii. Given that there is no discernible increase to the wall height (if it is considered that the rear/eastern wall extension of the glass line constitutes a wall height variation), there will be no perceptible change to the appearance of the dwelling when viewed from the foreshore and harbour areas. It is reiterated that foreshore and harbour areas are sited at least 300m from the dwelling and that the dwelling will be perceived against the backdrop of the more significant building forms (residential flat buildings) higher up the sloping topography, the variation to the wall height, would not generate any adverse visual bulk impacts to foreshore or harbour areas. The dense screen of canopy trees between the foreshore and the subject site also limited the perception of the dwelling from the foreshore areas. On this basis, the wall height variation does not generate any inconsistency with this objective.</p> <p>iii. <u>The desired future character of the area is defined by the built form controls in the LEP and the existing development. The two neighbouring dwellings to the north and south each have side boundary walls which exceed the wall height control.</u> Given that there is no change to the <u>overall</u> wall height, as viewed from the streetscape and from adjoining properties, there is no change to the apparent wall height of the dwelling. The dwelling will continue to present as single storey to the streetscape of Parriwi Rd and will therefore be modest in comparison to the 2-storey form of development which is envisaged by the 7.2m wall height. <u>The additional bulk that presents to 29 Parriwi Road is located behind the front building line of that dwelling and the living areas of that dwelling are oriented to the east. The view of the wall when viewed from the entrance stair of 29 Parriwi Road is obscured by the proposed landscaping in the front setback.</u></p>
---	--

	<p>iv. It is reiterated that there is no change to the existing <u>overall</u> wall height. The proposed insertion of highlight windows to the side elevations is considered to moderate the appearance of the largely unrelieved side elevations. On this basis, the wall height variation does not generate any inconsistency with this objective.</p> <p>On this basis, the wall height variation does not generate any inconsistency with this objective.</p>
<p>4.3(b) for development on land in Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B6 Enterprise Corridor:</p> <p>i. to ensure that buildings are compatible with the desired future character of the area in terms of building height and roof form and will produce a cohesive streetscape, and</p> <p>ii. to provide opportunities for buildings of a greater height than existing development in suitable locations to achieve the Council's residential strategy and provide opportunities for economic growth.</p>	<p>Not applicable – The subject site is located in the R2 Low Density Residential zone</p>
<p>Consistency with the objectives of the R2 Low-Density Residential zone</p>	
<p>Objectives</p> <ul style="list-style-type: none"> To provide for the housing needs of the community within a low-density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To retain the single dwelling character of the environmentally sensitive residential areas of Mosman. To maintain the general dominance of landscape over built form, particularly on harbour foreshores. To ensure that sites are of sufficient size to provide for buildings, vehicular and pedestrian access, landscaping and retention of natural topographical features. To ensure that development is of a height and scale that seeks to achieve the desired future character. To encourage residential development that maintains or enhances local amenity and, in particular, public and private views. To minimise the adverse effects of bulk and scale of buildings. 	<p>Assessment</p> <p>There is no change to the existing <u>overall</u> wall height as a result of the additions.</p> <p>On this basis, the proposed wall height does not generate any inconsistency with the zone objectives.</p> <p><u>The alterations and additions to the dwelling have been designed to retain the single dwelling character of the existing building. The additional floor space is generally located within the existing footprint to maintain the existing dominance of landscaping over built form. The landscaping will be upgraded and will result in a better landscaped outcome than existing which will minimise any adverse impacts of the bulk and scale of the building.</u></p> <p><u>The height and scale of the development is consistent with the built form controls and is complementary to the existing development on the neighbouring properties to the north and south.</u></p>

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

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

Assessment: The breach of the wall height in the area of the master robe and bathroom does not change the overall height of the building but rather fills in a void area. The use of that space is a function of the proposal being alterations and additions to an existing building. The re-use of the existing structure will result in a lesser construction period (which will cause less inconvenience to neighbours) and will save existing building materials with the effect of sending less material to landfill.

If the proposal were to be for the demolition of the existing dwelling and construction of a new dwelling, the built form would be distributed on the site to extend further to the east. Such a design could comply with the wall height but would have the effect of greater bulk to the southern neighbour in a location that would impact on its main outdoor living area. The discrete addition of floor space (and therefore wall height) in an existing void area provides amenity for the dwelling but reduces the impact on neighbours by retaining the compact footprint.

To the extent that the privacy screen and balustrade are considered to be 'wall', they provide a privacy solution to an existing balcony to improve the relationship between 29 and 29A Parriwi Road.

The realignment of the glazing to the eastern façade does not add any appreciable bulk to the dwelling and will be concealed in line with the existing nib walls to the balconies.

Formatted: Highlight

If one were to comply with the standard, it would require demolition of the existing second storey which would be a poor environmental planning outcome, especially when read with the streetscape to Parriwi Road as only the car port would be appreciable from the street. Given that no discernible change is proposed to the existing wall height, there are no adverse streetscape, visual bulk, or view impacts associated with the wall height variation.

The works above the wall height limit are confined to new highlight windows to the lounge and kitchen areas as well as the replacement of an existing window. Neither of these changes generates any adverse visual bulk, shadow or privacy impacts, noting that the southern neighbour has no habitable north-facing windows towards the subject site.

On this basis, there are sufficient environmental grounds to support the wall height 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 wall height standard and the R2 Low-Density Residential zone.

Furthermore, it is considered that the wall height variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height 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 wall height 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 wall height variation allows for the orderly and economical use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*. The proposed wall height 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 wall height is consistent with the State and Regional Policies, particularly urban consolidation principles that seek to provide additional height and density near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the wall height standard, given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(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.