

APPENDIX 4

CLAUSE 4.6 TO CLAUSE 4.3 OF MOSMAN LEP 2012 EXCEPTIONS TO DEVELOPMENT STANDARDS – **OVERALL HEIGHT**

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 accompanies Rev B plans, dated December 16 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*.

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.

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.*

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.*

Development Standard to be varied

The proposal seeks a variation to the development standard contained within clause 4.3 of the *Mosman LEP 2012* - maximum height of 8.5m, demonstrated on the LEP map in Figure 1 below. The maximum height is 9.14m.

Extent of variation

The maximum height variation of 0.64m occurs to the centre of the main ridgeline using an interpolated ground reference.

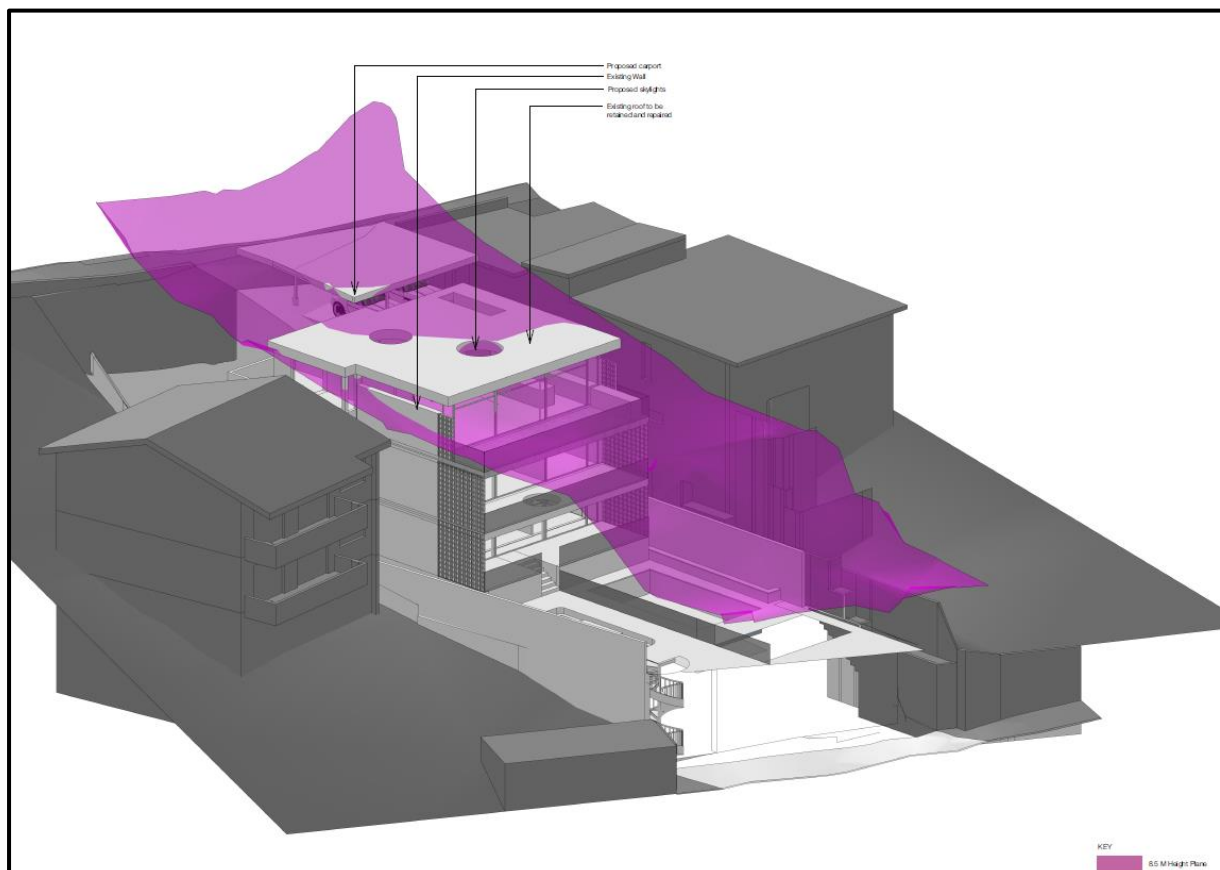


Figure 1: Excerpt of the 3D height plane, which shows that the elements of the built form which are over the overall height limit include the skylights inset to the existing/retained roof form and a minor element of the upper-level privacy screen and south-eastern corner of the skylight

These elements include the following variations to the height standard:

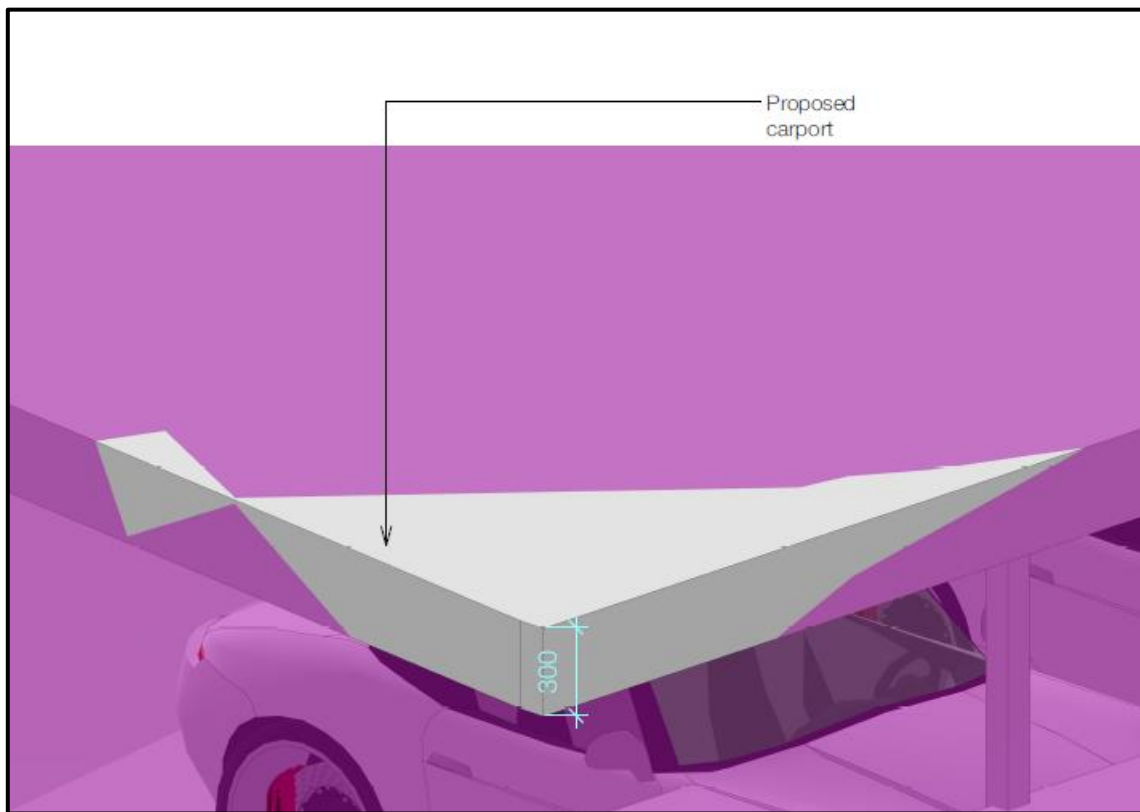


Figure 2: Carport height variation: 300mm

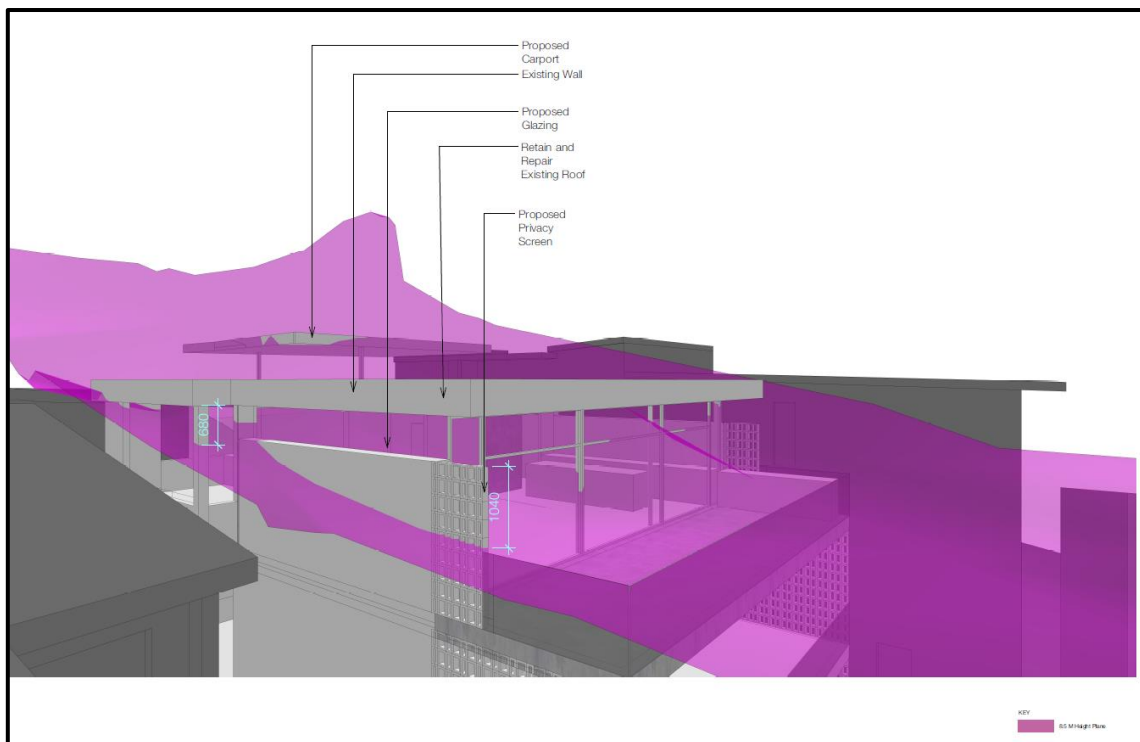


Figure 3: Height plane excerpt showing the extent of the height variation to the privacy screen is 1040mm whilst the remainder of the components are existing

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

It is considered that the height variation (being the rear/south-western corner of the carport roof, skylights inset to the existing roof and a minor portion of the rear privacy screen) will not generate any adverse or unreasonable streetscape impacts as these elements are minor and indiscernible when viewed along both sides of Parriwi Rd. The existing dwelling which breaches the height limit is unchanged. These changes maintain a single storey presentation to the streetscape, which is modest and below the 2-storey scale anticipated by the height controls. The following montage is compared with the existing presentation of the dwelling, noting that the overall height closer to the street is lowered.



Figure 4



Figures 4 and 5: Existing and proposed presentation to Parriwi Rd, which is considered to demonstrate that the height variation is associated with an improved streetscape outcome

Visual Bulk/Context

The portion of the built form over the height limit is limited to the change to the carport roof form and the upper-level rear privacy screens, which have no adverse visual impact when viewed from the public domain, noting that such components are lightweight features and are recessed from the street frontage.

The component of the built form above the height limit, including the privacy screens on the northern and southern sides, does not generate any adverse visual bulk impacts from the neighbouring either side, as these dwellings to the north and south of the site will continue to have their primary orientation to the east, beyond the rear of the extended dwelling. In particular, the portion of the built form above the height limit will not be evident from the northern neighbour as it has a largely blank south-facing wall towards the subject dwelling. Similarly, the southern neighbour has no north-facing habitable windows which face the extended dwelling.



Figure 5: View from the existing balcony looking to the predominantly blank wall of the northern neighbour at 29B Parriwi Rd, which demonstrates that there will be no adverse visual bulk impacts associated with the proposed extended built form/height variation on the subject site



Figure 6: View of the north-facing wall of the neighbouring southern dwelling at 29 Parriwi Rd, noting the absence of habitable windows and the rear elevation which contains the primary living and balcony areas, which will continue to look east beyond the proposed dwelling

Views

The long section and side elevations confirm that the proposed height variation will not generate any adverse view impacts from the properties on the western/high side of Parriwi Rd nor to any other surrounding neighbours. The proposal reduces the height of the carport roof at the front/western end but increases it at the rear/eastern end whilst remaining compliant with the height limit. When viewed from the high side of Parriwi Rd, views would continue to remain over the top of the existing dwelling, noting that the overall height of the dwelling is

maintained. Such assessment is also consistent with that within Council's assessment report.

Overshadowing

The updated 3D view from the sun diagrams confirms that the rear yard and east-facing living room and balcony areas at the rear of the southern neighbour will continue to receive solar access, noting that Council's shadowing requirements in the DCP only requires that north-facing habitable room windows retain at least 3-hours solar access between 9am and 3pm on June 21. It is noted that the neighbouring southern dwelling at 29 Parriwi Rd has no north-facing habitable windows.



Figure 7: View of the north-facing wall of the neighbouring southern dwelling at 29 Parriwi Rd, noting the absence of habitable windows and the rear elevation, which contains the primary living and balcony areas which will continue to receive solar access

It is noted from the 3D shadow diagrams that additional shadows will be cast by the privacy screens associated with the extended balconies at the rear. However, it is noted that the excerpt of the screens are not solid and will allow for partial retention of solar access.



Figure 8: Excerpt of the precedent image of the breezeblock screens along the sides of the balconies

Visual and Acoustic Privacy

The elements of the dwelling which are above the height limit include privacy screens which will reduce the amount of existing extent of overlooking that is available due to the unscreened balcony associated with the existing upper-level balcony.

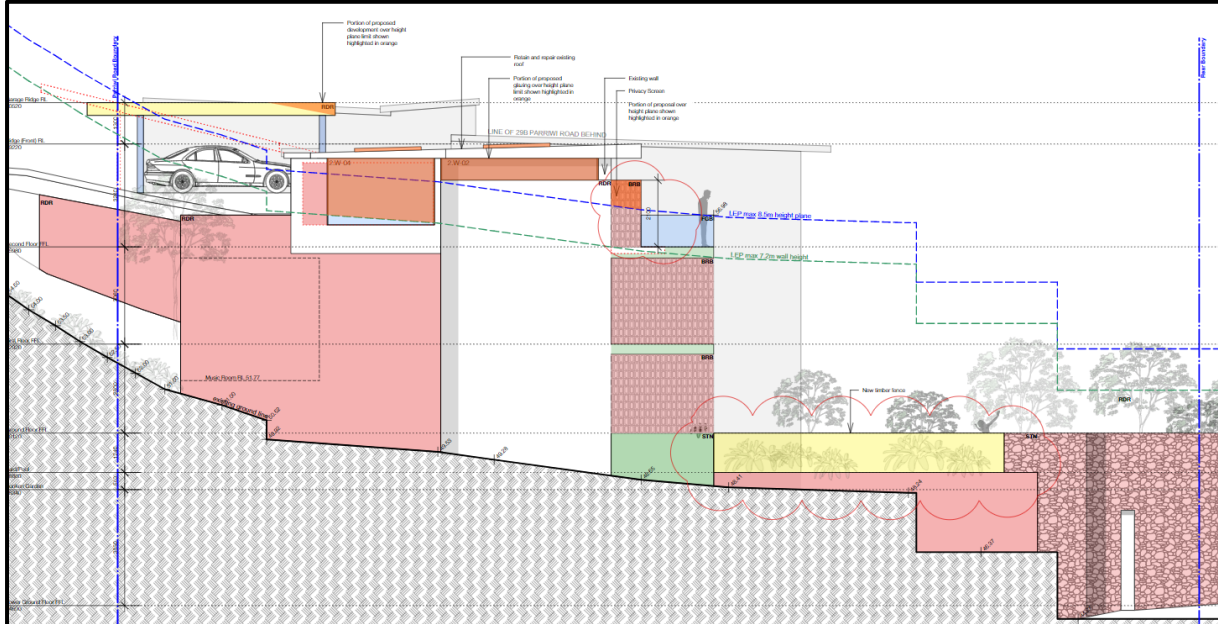


Figure 9: Excerpt of the southern elevation shows that the privacy screen elements to the lower two levels are below the height limit. The upper-level privacy screen that is above the height limit (circled and arrow) but is not solid in form and addresses an existing privacy impact as the existing balcony in that location is unscreened and allows for direct overlooking, as shown in the photo below



Figure 10: Existing overlooking opportunities as viewed from the existing unscreened balcony

Amenity improvements

The proposed elements which breach the height limit (skylights and privacy screens) are considered to improve the amenity of the dwelling by enhancing solar and daylight access to the upper-level living area whilst also reducing existing privacy impacts to the neighbouring southern dwelling.

- 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>4.3(a) for development on land in Zone R2 Low-Density Residential or Zone R3 Medium Density Residential:</p> <p>i. to share public and private views, and</p>	<p>The proposed height variation does not compromise the achievement of the objectives of the height standard as the proposal:</p> <p>i. It is confirmed that the proposed height variation to the maximum overall height will not generate any adverse view impacts as views from all properties will be maintained. The retention of views is achieved by the sensitive siting of the additional screening and balcony areas so that they do not intrude into the view corridors for neighbouring properties. The properties on the high/western side of Parriwi Rd will maintain views eastwards out and over the proposed dwelling, notwithstanding the height variation. This assessment also applies to the component of the carport roof, which breaches the height limit. Similarly, the neighbouring properties on either side to the north and south at 29B and 29 Parriwi Rd will continue to look past the extended built form. The components which breach the height limit are primarily limited to the existing building and the new privacy screen on the southern side of the extended upper-level balcony.</p> <p>Public views from the footpaths along both sides of Parriwi Rd will be unaffected by the height variation, noting that most of the height variation relates to the existing 3-storey dwelling. The additional components beyond that which exists are limited to the altered carport roof and the privacy screen on the southern side of the upper-level balcony. Such components will not generate any public view impacts.</p> <p>On this basis, it is confirmed that the objectives of the standard are satisfied, notwithstanding the height variation.</p>

<p>ii. to minimise the visual impact of buildings particularly when viewed from the harbour and surrounding foreshores, and</p>	<p>ii. The minor nature of the new works above the height limit (being the carport roof, privacy screens and extended glass lines to the east) will not generate any adverse or discernible visual impacts from the foreshore or harbour areas. There are no foreshore areas that would provide any vantage points of the proposed dwelling (inclusive of the height variation). The dwelling will appear against the backdrop of more substantial built forms (being multi-storey residential flat buildings) higher up the sloping topography to the west of the site. The presence of dwellings and tree canopies in the foreground, combined with the minor nature of the additions above the height limit, also ensure that such components will not be readily perceptible. The substantial distance of the dwelling from the foreshore and the harbour (300m) also minimises the presence of the built form.</p> <p>On this basis, it is confirmed that the objectives of the standard are satisfied, notwithstanding the height variation.</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>iii. The height standards envisage a 2-storey form with a pitched roof form. The existing dwelling has 3-storeys with a skillion roof form which predates the current controls. Given that the height of the main dwelling form remains unchanged from that which exists and that the dwelling presents to Parriwi Rd as being a single storey, the variation to the height limit does not generate any inconsistency with the desired future character.</p> <p>The changes to the carport roof are considered to improve the presentation of the carport and dwelling in the streetscape, despite the change to the roof form generating a height variation. Furthermore, the privacy screen elements that breach the height limit do not generate any inconsistency with the desired future character due to the lightweight and discreet screens on the sides of the rear upper level.</p> <p>On this basis, it is confirmed that the objectives of the standard are satisfied, notwithstanding the height variation.</p>
<p>iv. to minimise the adverse effects of bulk and scale of buildings,</p>	<p>iv. The proposed alterations and additions have minimised the visual impact of the</p>

	<p>additions as they are primarily confined to being below the height limit. The portion of the built form over the height limit is limited to the change to the carport roof form and the upper-level rear privacy screens, which have no adverse visual impact when viewed from the public domain, noting that such components are lightweight features and are recessed from the street frontage.</p> <p>The component of the built form above the height limit, including the privacy screens on the northern and southern sides, does not generate any adverse visual bulk impacts from the neighbouring either side, as these dwellings to the north and south of the site will continue to have their primary orientation to the east, beyond the rear of the extended dwelling. In particular, the portion of the built form above the height limit will not be evident from the northern neighbour as it has a largely blank south-facing wall towards the subject dwelling. Similarly, the southern neighbour has no north-facing habitable windows which face the extended dwelling.</p> <p>On this basis, it is confirmed that the objectives of the standard are satisfied, notwithstanding the height variation.</p>
<p>4.3(b) for development on land in Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B6 Enterprise Corridor:</p> <ol style="list-style-type: none"> 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 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>Not applicable – The subject site is located in the R2 Low-Density Residential zone.</p>
Consistency with the objectives of the R2 Low-Density Residential zone	
Objectives	Assessment
<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 	<p>The height variation is limited to the pitched roof form, which does not generate any inconsistency with the zone's objectives. The height variation facilitates the provision of a modified dwelling house that provides for the applicant's housing needs whilst maintaining a low-density residential environment.</p> <p>The modest nature of the dwelling as it appears to the public domain and from</p>

<p>landscape over built form, particularly on harbour foreshores.</p> <ul style="list-style-type: none"> • 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>private properties ensures that the landscaped setting is retained.</p> <p>On this basis, the proposed height does not generate any inconsistency with the zone objectives.</p>
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Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

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

Assessment: It is considered that the points included above under the assessment, which demonstrate that the height standard is unreasonable or unnecessary, also constitute environmental grounds to permit the variation in this instance.

The steeply sloping nature of the site is considered to contribute to the height breach, particularly at the rear, whereby the inclusion of the privacy screen to an existing balcony triggers the breach towards the rear of the built form.

Unimpeded overlooking is available from the existing upper-level rear balcony to the neighbouring southern dwelling. The privacy screen that is proposed along the southern edge of the existing balcony will reduce overlooking impacts, and therefore the variation is considered to contribute to a better outcome. This outcome is considered to constitute a sufficient environmental ground.

Similarly, the proposed redesign of the carport roof whereby the height of the roof closest to the street front is reduced is considered to minimise the visual impact of the carport in the streetscape. On this basis, the height variation associated with the revised carport roof design is considered to have a positive streetscape outcome. This design improvement is considered to constitute a sufficient environmental ground.

The retention of solar access to the property's primary living, balcony and private open space areas to the south at 29 Parriwi Road, despite the height variation, is also considered to constitute a sufficient environmental ground.

Similarly, the retention of views from the public and private vantage points, notwithstanding the height variation, is also considered to constitute a sufficient environmental ground.

The absence of visual bulk impacts from adjoining properties is another factor in determining that there are sufficient environmental grounds to permit the variation in this instance

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

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 height standard and the R2 Low-Density Residential zone.

Furthermore, it is considered that the 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 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 height variation allows for the orderly and economical use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*. The proposed 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 height is consistent with the State and Regional Policies, particularly urban consolidation principles, which 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 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.