

22nd August 2025

Clause 4.6 – Variation Request

Exceptions to Development Standards in relation to Clause 4.3(2) - Height of buildings, of the Warringah Local Environmental Plan 2011.

83 CROWN ROAD, QUEENSCLIFF

S4.55 ISSUE

Preamble

This written request is made pursuant to the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 (the LEP). A variation is sought in relation to the Height of Buildings standard of Clause 4.3(2) of the LEP, in relation to alterations and additions to the existing dwelling house, at 83 Crown Road, Queenscliff. Under Clause 4.3 a maximum height of 8.5m above natural ground is permissible.

This exception statement has been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards

The objective of LEP Clause 4.6 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.*

The Development Standard to be Varied

The development standard to be varied is Clause 4.3 Height of Buildings in the WLEP 2011. As identified on the WLEP 2011 Height of Buildings map, the subject site has a maximum height of 8.5m.

Objectives of this Standard

The objectives of LEP Clause 4.3 Height of Buildings are as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

In accordance with the decision of *Wehbe v Pittwater Council* the applicant seeks to establish that 'the objectives of the development standard are achieved notwithstanding non-compliance with the standard'.

Extent of Variation to the Development Standard

The proposed development includes alterations and additions to a primarily two storey dwelling house. By virtue of the slope of the site, the dwelling becomes three storeys at the Northern extent of the dwelling towards Highview Avenue.

New flat and skillion roofs are proposed over the existing building envelope to replace an existing tiled gable roof form. The ridges of two proposed skillion roofs exceed the maximum height limit of 8.5m. The amount by which the roofs exceed the height line varies due to the topography (as shown on the attached Architectural plans; East and West Elevations DA6 and DA7).

At the highest point, the northern-most pop up skillion roof ridge measures 9.7m above natural ground surface, that is 1200mm above the maximum building height line. The majority of the proposed skillion roofs and the entirety of the proposed flat roof remains well under the maximum height line.

It is important to note the existing tiled gable roof form exceeds the 8.5m height limit (WLEP 2011) currently - its ridge measures 10.2m above the ground line at its highest point.

Per the assessment report of the approved DA (DA2024/1139) prepared for the DPP, a non-compliant height of 9.8m (15.3% variation) was reviewed and approved, finding that while 9.8m

exceeds the height limit, the proposal is considered to be an improvement to the existing height non-compliance, and compatible with the height and scale of surrounding and nearby development.

It represents a substantial reduction in overall building height and is consistent with the proposal's efforts to minimise visual impact.

Furthermore, it is important to note that the majority of the dwelling and roof exists within the 8.5m building limit defined by the WLEP 2011, and that only the highest ridges of these roofs exceed the maximum height line.

In addition, the surrounding vicinity is characterised predominantly by large two and part three storey dwellings of a similar scale. This proposal is in keeping with existing bulk and scale of the streetscape and will not set an undue precedent.

Assessment

In accordance with the NSW LEC judgement on *Initial Action Pty Ltd v Woollahra Municipal Council* [2018], the applicant's written request to contravene a development standard should demonstrate two matters. First, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Secondly, that there are sufficient environmental planning grounds to justify contravening the development standard. This request addresses both matters.

Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Strict compliance with the height of buildings standard is unreasonable and unnecessary given the following circumstances of this case:

- The proposal complies with the objectives of the height control as the exceedance of the height control is not easily visible from Crown Rd and the proposal presents as two-storey to Crown Rd.
- In accordance with objectives of LEP Clause 4.3 Height of Buildings, the proposal is compatible with the height and scale of surrounding development with many neighbouring developments of comparable height and scale along the street. The proposed building envelope and height of walls remain largely unchanged from the existing, maintaining the existing bulk and scale which is in harmony with the streetscape, characterised predominantly by large two and three storey dwelling houses. It should be noted that there are numerous dwellings in the vicinity that demonstrate non-compliance with the height standard. Properties on the opposite side of Crown Road are three to four storeys in height.

- By renovating the existing roof form, the proposal reduces the bulk of the existing and improves visual impact and solar access, in accordance with objectives of LEP Clause 4.3, Height of Buildings. Roofs are proposed at a lower height than that of the existing building. Thus, the impacts of the proposed development on adjoining and nearby properties are not only minimised, but views, privacy and overshadowing are improved.
- Given the proposals reduction in roof bulk and height, neighbouring properties will have improved solar access as illustrated in the shadow diagrams submitted with the Architectural drawings. These demonstrate three hours of sunlight to the adjoining properties principal private open space on the 21st June is maintained between 9am and 3pm. It is important to note that the North / South orientation of these properties guarantees all properties sufficient solar access. There is no impact on the privacy of neighbours created by the alterations to the existing non-compliant portion of roof.
- A reduction to the proposed roof height would result in significant modification to the existing building and so result in an unreasonable reduction to the existing habitable floor area and thus impact the overall amenity of the residents.
- Every effort has been made to minimise this non-compliance. The following features should be noted:
 - The roofs that encroach the maximum height line have been designed to provide shade in summer, maximise sunlight in winter and allow natural cross-ventilation, supporting DCP objectives for “innovative roof pitch and variation in roof design”
 - Reasonable sharing of views to and from public and private properties is allowed.
 - The proposal has been designed with articulated facades to minimise the visual bulk from the street and adjoining properties. Landscaping and increased vegetation will assist in ensuring that the natural environment retains priority.
 - The proposal has been designed to respond sensitively to the existing topography by following the slope of the land and minimising excavation as far as possible.
 - Landscaped Open Space is compliant with the minimum 40% requirement.

Any Matters of Significance for State or Regional Environmental Planning

The minor exceedance to the height control does not raise any matter of State or regional planning significance.

Conclusion

This written request is for an exception to the height of building standard under clause 4.6 of the WLEP 2011. It justifies the contravention to the height of building standard in the terms required under clause 4.6 of the LEP and in particular demonstrates that the proposal provides a better planning outcome with no significant adverse environmental impacts. A contravention has been previously approved by the DPP in regards to the original DA, and this modification seeks a minor change that stays below that approved amendment. Therefore in the circumstances of the case:

- Compliance with the height of building standard is unreasonable and unnecessary.
- There are sufficient environmental planning grounds for the contravention.
- The proposed dwelling is sympathetic to the scale and character of the existing site, its environment and its neighbours.
- The proposal is an improvement to the existing building envelope.
- The alterations are contained largely within the existing building envelope.
- A range of higher impact solutions have been considered by the applicant, however, the proposed design has been submitted due to its lower impact on the environment and neighbouring properties.
- It is in the public interest in being consistent with the objectives of the height of building standard and zone.
- There are no matters of State or regional planning significance and no public benefits in maintaining the height standard in this case.