3/30/2022

CL 4.6 VARIATION
TO
HEIGHT CONTROL
AT
69 EVANS STREET FRESHWATER
PREPARED
FOR
WOODHOUSE AND DANKS P/L
ARCHITECTS
BY
CHARLES HILL PLANNING

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1.0 INTRODUCTION
This submission has been prepared in response to Northern Beaches Council request for further information related to **DA2021/2588**, and in particular the height of the proposed privacy screens, in respect of the alterations and additions to the building known as 69 Evans Street Freshwater.

This application relates to an existing residential flat building located within a R2 Low Density Residential zone, which has a height estimated to be 28.58 metres, exceeding the now prescribe height limit of 8.5 metres.

Accordingly, this application is made on the basis of the existing use rights which apply to the subject site.

In that regard this submission seeks to justify a variation of the height control applicable to the subject land, having regard to the requirements of the Environmental Planning and Assessment Act, 1979 and Regulations, Warringah Local Environmental Plan 2011, and relevant Land and Environmental Court decisions.

In accordance with e requirements of Clause 4.6 of the Warringah Local Environmental Plan 2011, the report concludes that the applicable height control in this instance is both unreasonable and unnecessary, there are sufficient environmental planning grounds to justify contravening the development standard, and approval of the subject application would be in the public interest.

Accordingly approval of the subject application is recommended for approval.

2.0 BACKGROUND
2.1 Summary of Application

18/1/22 application submitted for the alterations and additions to an existing residential flat building.

21/3/22 Council requested an updated request in relation to Clause 4.6 of Warringah Local Environmental Plan 2011, in respect of the height of the proposed privacy screens.

2.2 Warringah Local Environmental Plan 2011 ("WLEP")

In accordance with **Clause 2.2** of WLEP 2011, the subject land is zoned **R2 Low Density Residential,** and dwelling houses are permissible with Council consent.

The **objectives** of the R2 zone area as follows:

- *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 ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Clause 4.3 refers to the maximum **Height of Buildings** permitted.

The objectives of this clause 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.
(2) …….
(2A…….

Clause 4.6 refers to **Exceptions to Development Standards**

The Objectives of Clause 4.6(1) of WLEP are:

(*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.

COMMENT

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1) (a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

(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.

COMMENT

Clause 4.3 (the maximum height of development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of WLEP.

Clause 4.6(3) of WLEP provides:

(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.

COMMENT

The proposed development does not comply with the height of development standard pursuant to clause 4.3 of WLEP which specifies a height of 8.5 metres, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

(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 Secretary has been obtained.

COMMENT

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]).

The first precondition is found in clause 4.6(4) (a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4) (a) (i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) (a) (i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4) (b). The second precondition of satisfaction requires the consent authority to be satisfied that that the concurrence of the Secretary

(of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.
However in this particular case, as the matter is in excess of the 10% variation, the matter will be determined by the Council's Local Planning Panel.

Clause 4.6(5) of WLEP provides:

> *(5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

3.0 THE NATURE AND EXTENT OF THE VARIATION

This request seeks a variation to the height of development standard contained in Clause 4.3 of WLEP 2011.

In accordance with the Height of Building Map referred to in Clause 4.3 of WLEP 2011, a maximum height of development specified for the subject site is 8.5 metres.

In that regard part of the works referred to in **DA 2021/2588**, include provision of privacy screens of services i.e. hot water tanks and AC condensers located on the balconies, and the installation of privacy screens on the balconies, as and when required by the owners.

Although the existing residential flat building has a height at Level 11 of RL of 41.26, or according to Council, a maximum height of 28.5 metres, the proposed privacy screens when installed, whilst being within the existing building envelope, will be located above the allowable 8.5m, prescribed by WLEP 2011.

Accordingly, and notwithstanding that the existing residential flat building already exceeds the 8.5 metre height limit, as the building is 20.70m above the allowable 8.5m for this

locality, resulting in a technical variation of 336.24%, a variation to the height limit is now sought.

4.0 **RELEVANT CASE LAW**

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29] as follows:

> *13. The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
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> *14. The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4) (a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*
>
> *15. The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3) (a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
>
> *16. As to the first matter required by cl 4.6(3) (a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*
>
> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or*

unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

23. *As to the second matter required by cl 4.6(3) (b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)*

(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4) (a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

25 *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3) (a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3) (a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3) (a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*

26. *The second opinion of satisfaction, in cl 4.6(4) (a) (ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4) (a) (ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*

27. *The matter in cl 4.6(4) (a) (ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

28. The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

29. On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4) (a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4) (b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].

COMMENT

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows**:**

1. Is clause 4.3 of WLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5.0 Request for Variation

5.1 Is clause 4.3 of WLEP a development standard?

The definition of "development standard" in clause 1.4 of the EP&A Act includes:

*(c) the character, location, siting, bulk, scale, shape, size, **height** (my emphasis), density, design or external appearance of a building or work,*

Clause 4.3 of WLEP relates to height of a building.

Accordingly clause 4.3 of WLEP is a development standard.

5.2 (a) Is compliance with clause 4.3 unreasonable or unnecessary?

This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.

The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council's own actions in approving development that does not comply with the standard.

Each objective of the height standard and reasoning why compliance is unreasonable or unnecessary is set out below.

(a) **to ensure that buildings are compatible with the height and scale of surrounding and nearby development**.

It is considered that the variations to the applicable standard in relation to the proposed privacy screens satisfies the objectives of this Clause, in that any perception of the height and scale of the existing residential flat building will not change as a result of the provision of the privacy screens, and will continue to be seen as a 11 storey residential flat building from the public domain.

The existing residential flat building, whilst not necessarily the same as the majority of other development in this locality, it is an established development, and the contextual, visual and landscaping relationships with adjoining development, and the streetscape in which the building is sited, will continue to be maintained.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar ace

It is considered that there will be minimal visual impact as a result of the erection of the privacy screens.

In fact it is considered that the screens will provide increased articulation of the building when viewed from the public domain.

Similarly there will be no disruption to views, loss of privacy or loss of solar access.

Privacy will however be improved for occupants of the residential flats, once the privacy screens are erected on the balconies.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

The provision of the privacy screens will not impact adversely on the scenic quality of Warringah's coastal or bush environment.

(d) ***to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities***

There will be no adverse visual impact arising from the erection of the privacy screens when viewed from public places such as parks and reserves, roads and community facilities.

Accordingly it can be concluded that the erection of the proposed privacy screens are consistent with the objectives of the height standard, and as such, compliance with the height standard would in this instance be unreasonable and unnecessary, particularly as the privacy screens are contained within the building envelope of an existing and approved residential flat building.

5.2 (b) Are there sufficient environmental planning grounds to justify contravening the development standard?

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

Although the existing residential flat building already exceeds the prescribed height, and although the proposed privacy screens are within the existing building envelope, they exceed the height limit of 8.5 metres

As indicated previously the overall height of the existing residential flat building does not change as a result of the proposed privacy screens, and its contextual relationship with adjoining development, as well as the streetscape, will be maintained,

The proposed addition of the privacy screens do not cause any adverse environmental impacts in terms of amenity to adjoining property owners such as overshadowing, privacy or loss of views.

In that regard, whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1), it is relevant to note that objective (b) provides:

"to achieve better outcomes ***for and from*** (my emphasis) *development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action,* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

It is considered that the variation to the development standard in this instance, does not reduce the amenity of other development in the vicinity of the site or the public domain, but results in significantly enhanced amenity for the occupants of the existing residential flat building in terms of screening of existing services, as well as providing increased privacy on their balconies.

The various proportions of the existing residential flat building have been maintained that contribute to the visual appearance of the building, enabling a visual identification of a built form that remains appropriate for the site.

More importantly it is considered that a flexibility in relation to the height standard, results in a better planning outcome being achieved, and increased amenity for the occupants of the existing residential flat building.

Further to the above it is noted that existing view corridors are not adversely affected by the provision of the privacy screens.

In addition, the variation to the development standard does not result in additional overshadowing, as there are no changes proposed to the existing height of the building envelope and or footprint of the existing building, and there are no shadow adverse impacts.

Additionally, the variation to the development standard does not result in any increase of impacts on the streetscape.

That is this proposal does not change the height, form, design and finished materials of the facades facing Evans Street.

The form of the development, its appearance and its size, as seen from the public domain, will not been changed as a result of this application, and is entirely consistent with the existing character of the area.

It is considered that the absence of external impacts, the increased internal amenity for the occupants of the residential flat building, constitute sufficient environmental planning grounds to justify a departure from the development standard, which could not be otherwise achieved if the prescribed height limit was maintained.

The proposed development also achieves the relevant objects in Section 1.3 of the EPA Act, in that the proposed modification specifically:

- Promotes the orderly and economic use and development of land through the efficient use of infrastructure (roads, water, sewer, electricity, community services, and facilities), to meet the housing needs of the community.
- Does not adversely impact on the *conservation of threatened and other species of native animals and plants, ecological communities and their habitats* (1.3(e)).

- Provides increased articulation of the existing residential flat building, without any increase in height or footprint of that building, providing increased amenity for the residents of the residential flat building (1.3(g)).

- Provides for the proper construction and ultimate use of the balcony areas, in addition to the screening of services, ensuring the continued maintenance of the approved residential flat building, and the protection of the health and safety of its future occupants (1.3(h)).

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the height control standard.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

> *86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
>
> *87. The second matter was in cl 4.6(3) (b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

5.3 **Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3, and the objectives of the R2 Low Density Residential zone?**

(a) Section 4.2 of this written requests demonstrates that the proposed privacy screens meets the relevant applicable objective of clause 4.3.

(b) Each of the objectives of the R2 zone and the reasons why the proposed development is consistent with each objective is set out below:

- ***To provide for the housing needs of the community within a low density residential environment.***

The existing residential flat development is consistent with this objective to the extent that it will continue to provide for the housing needs of the community, notwithstanding that the zoning has been changed to that of a low density environment.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

Not Applicable to the proposed development.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah***

No changes are proposed as a result of the erection of the privacy screens in so far as it relates to the character of the landscape setting, and or any adverse impactions concerning the natural environment of the subject locality..

In that regard it can be concluded that the public interest is best served by approving the height variation in this instance, as it will in the longer term provide privacy screens to the services of the existing residential flat building, as well as providing increased privacy in the use of the balconies areas of the individual units, with no adverse impacts on adjoining properties or the public domain.

5.4 Has council obtained the concurrence of the Secretary of the Department of Planning?

Not applicable in this instance.

Further to the above it is noted that the proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it relates the height of privacy screens

In addition, the approval of the proposed privacy screens, is not readily transferable to any other site in the immediate locality, wider region of the State, and the scale or nature of the proposed privacy screens do not trigger requirements for a higher level of assessment, or necessarily set a precedent for developments of a similar nature.

It is considered that the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone, and as such there appears to be no significant public benefit in maintaining the development standard in this instance.

CONCLUSION

In summary, it is considered that the proposal satisfies all of the requirements of clause 4.6 of WLEP 2011 and exception to the development standard is reasonable and appropriate in the circumstances of the case, there are sufficient environmental grounds, the proposed modification is in the public interest, and as such the application is recommended f for approval.

Charles Hill
30/3/2022