

Dear Chief Executive Officer

20<sup>th</sup> May 2020

**PREMISES AT 39 Heather Street Wheeler Heights**  
**PROPOSED ALTERATIONS AND ADDITIONS**

**CLAUSE 4.6 REQUEST -EXCEPTION TO THE DEVELOPMENT STANDARD (HEIGHT OF BUILDINGS) -WARRINGAH LOCAL ENVIRONMENTAL PLAN 2014**

This present document is a written variation request submitted under clause 4.6 of Warringah Local Environmental Plan 2014 in connection with a development application seeking consent for alterations and additions to an existing dwelling.

**1. INTRODUCTION**

Clause 4.3 of the WLEP controls the height of building. Relevantly, clause 4.3 (2) of WLEP provides that the height of a building on any land is not to exceed the maximum height shown for the land on the height of buildings map, WHICH IS 8.5M.

The existing building height of the dwelling is 10m.

Portion of the proposed roof extension above the new rear deck, which is a lower flat roof will slightly contravene the building height by 300mm.

A variation has been requested.

**2. REQUEST TO VARY A DEVELOPMENT STANDARD**

It is requested that a variations be sought for the max height (clause 4.3) for the proposed roof addition to the rear of the existing dwelling.

The request is submitted to council in connection with and in support of the development application and is to be read in conjunction with the statement of environmental effects and submitted to council in support of and to inform the development application.

The SEE deals with the impacts of the development proposal in detail and provides details and compliance with the relevant planning controls and objectives.

Clause 4.6 of the WLEP allows Council 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 to achieve better outcomes for and from development.

Clause 4.6 of the WLEP requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

\* that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

\* that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and

\* that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters, must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The land and environment Court of NSW has provided judicial interpretation and clarification of the matters to be addressed in relation to variations to development standards lodged under the State Environmental Planning Policy 1 – Development Standards

(SEPP 1) through the judgment of Justice Lloyd in “Winten Property Group Ltd v North Sydney Council (2001) 130 LGERA 79 at 89 (‘Winten’)

The ‘Winten test’ was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* (2007) NSW LEC 827 (‘Wehbe’). These tests and clause 4.6 of the LEP and other standard LEP instruments. Accordingly, this clause 4.6 variation request is set out using the relevant principals established by the court. Another recent one in the NSW Court of Appeal in *Four2Five Pty Ltd v Ashfields Council* (2015) NSWCA 248 has had some very important things to say about the use and construction of clause 4.6.

### 3. DEVELOPMENT STANDARD TO BE VARIED

The site is Zoned R2 under the WLEP.

This written request is to justify the contravention of the standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest as it is consistent with the objectives of the standards and are of relevance to the subject matter of the development application and the objectives for the development within the R2 zone under WLEP in which the development is proposed to be carried out.

The proposed roof addition is below the current existing roof height. Currently the existing roof contravenes the building height, with an existing building height of 10m. The proposed roof addition which is to cover a new balcony is partially above the 8.5m building height. Portion of the roof height will have a height of 8.8m, which is a very minor encroachment.

Due to the topography of the land, and with the site falling towards the rear of the site, it is difficult to adhere strictly to the required building height.

### 4. THE OBJECTIVES OF THE STANDARDS

Clause 4.3 (1) of the WLEP and the objectives of this clause are as follows:

**a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.**

The proposed roof extension to the main residence is consistent with the low density character of the precinct

Landscaping of the site has not been reduced due to the proposed addition. All of the existing vegetation will remain on the site.

The scale of the proposed development is consistent with the adjoining residential lots. The proposed development does not result in any privacy issues or impacts to nearby neighbours.

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

Development in the area is defined to a greater or lesser extent by residential lots constrained by steeper slopes and dense vegetation.

The proposed roof addition above the new balcony addition is compatible with the surrounding developments in the area.

**c) to minimise any overshadowing of neighbouring properties**

Neighbours privacy will also **not** be affected.

The proposed roof addition will not affect adjoining properties.

There will be a small additional shadow casting at 9am to no.41 due. However this adjoining property will continue to receive a min of 3 hours of solar access.

The proposal satisfies this objective.

**d) to allow for the reasonable sharing of views.**

The proposal will not interrupt view corridors of its neighbours to any significant or material extent.

**e) to encourage buildings that are designed to respond sensitively to the natural topography.**

The proposal will not affect the existing landscaping on the site.

**f) to minimise the adverse visual impact of the development on the natural environment, heritage conservation areas and heritage items.**

The development is not a heritage item nor is it located in a heritage conservation area.

The site contains natural vegetation with some introduced species. The proposed roof addition will continue to sit unobtrusively in the streetscape, there will be no effect upon the natural environment.

The objective satisfies this objective.

**Conclusion to this**

In respect of the height standard which is of a minimal significance with respect to the objectives of the relevant applicable height of building development standard. The gradient of the land and the height of the existing building ridge, all assist in ensuring that a casual observer would have some difficulty in reading a small part of the additional height of the roof extension.

It is concluded that the development will be consistent and will still satisfy relevant height objectives, notwithstanding the numerical departure from the standard contained in clause 4.3 of WLEP.

The development is consistent with all of the abovementioned objectives of the standard.

The proposed development is consistent with such of the aims of the WLEP as are relevance to the development.

**5. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT CLAUSES 4.6 (3)(b)**

There are numerous environmental planning grounds for varying the development standard which is the preservation of appropriate residential density and the amenity, maintaining privacy for residents, preserving the natural topography and the biodiversity significance of the locality.

The proposal is consistent with the aims of the WLEP as it constitutes a good environmental planning ground justifying a contravention of the maximum height of buildings development standard contained in clause 4.3 of the WLEP.

Another good environmental planning ground justifying a contravention of the development standard in this instance is that there is no demonstrable public benefit in maintaining the development standard, clause 4.6 (5)(b) in this instance for to do would not result in any material public benefit in this situation.

The maximum height that is achieved in this case is 8.8m which is a minor height encroachment of 300mm. ONLY A SMALL PORTION CONTRAVENES THIS HEIGHT

The proposed development will result in an improved outcome for the occupants and for the wider community in that there are likely to be no significant amenity impacts for residents and neighbours.

The proposed development is unlikely to increase the demand on local infrastructure and service and is entirely consistent with such of the zone objectives as are of relevance. The residential environment will remain characterised by a diverse range of low density dwelling styles, whilst not detracting from the consistent natural landscape setting.

This is a written request that the development will achieve the relevant zone objectives notwithstanding the numerical non-compliance with the height standard contained in clause 4.3 of the WLEP.

The above constitute good environmental planning grounds to justify contravening the development standard.

## 6. CONCLUSION

The proposed roof addition has been designed to provide for an indoor/outdoor covered living area. It will not affect adjoining properties.

Amenity to adjoining properties is maintained and no view loss will be experienced by the proposal.

The proposal will not have an adverse effect on any special ecological, scientific or aesthetic values.

It is requested that this non-compliance be supported as there would be no practical utility in enforcing strict compliance with the relevantly applicable height of buildings development standard. All of the above constitutes good environmental planning grounds to justify contravening the development standard in this particular instance.

The variation from the development standard will not contravene any overarching State or regional objectives or standards, it will have no effect outside the site's immediate area and raises no issue of significance for State and or regional environmental planning.

Maintaining strict compliance with the 8.5m height of buildings development standard would not result in any public benefit in this instance. To maintain, to strictly enforce and apply the development standard in this instance would prevent the carrying out of an otherwise well designed residential development which is suited to the site.

## IN SUMMARY

It is requested that this development justifies the contravention of the height of buildings development standard contained in clause 4.3 of the WLEP by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development shows it will be in the public interest as it is consistent with such of the objectives of the standard as are of relevance to the subject matter of the development application and the objectives for the development within the R2 zoning.

It is sought that this development application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the WLEP.

Yours Sincerely

Jitka Jankovec c/- JJDRAFTING