



**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6
OF WARRINGAH LOCAL ENVIRONMENTAL
PLAN 2011**

**VARIATION OF A DEVELOPMENT STANDARD
REGARDING THE HEIGHT OF BUILDINGS AS
DETAILED IN CLAUSE 4.3 OF WARRINGAH
LOCAL ENVIRONMENTAL PLAN 2011**

**Alterations and Additions to Existing Dwelling
House, Swimming Pool and Associated Works**

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This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

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Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011). It is noted that this request is made for the proposed alterations and additions to a dwelling house including a new swimming pool and associated works at 5 Bindi Place, Beacon Hill.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the judgements contained within *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Permitted	8.5m
Proposed	8.86m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	4.24%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The proposal is consistent with surrounding developments and the proposed minor increase is compatible with the locality and complies with other relevant controls which determine the built form of the site.

Clause 4.6 Variation Requirements

Compliance being unreasonable or unnecessary

1. 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].
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council* at [45]
3. 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]
4. 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 stand is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. 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(3)(b) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.3(2) Height of Building

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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

(5) *(Repealed)*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) *(Repealed)*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,*
- (c) clause 5.4,*

(caa) clause 5.5.

(d) (Repealed)

(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.

(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.

Comment: As detailed previously in this request, Clause 4.6 of WLEP 2011 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the Height of Building control of WLEP 2011, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3)(b)*

4.3 Height of buildings

(1) 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) 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.

(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the WLEP 2011 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the WLEP 2011, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes.

This proposition is reinforced by the following:

Clause 4.3 (2) states:

(2) 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](#).

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the WLEP 2011 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

ground level (existing) means the existing level of a site at any point.

It is noted that Northern Beaches Council refers to the leading case authority which considers the definition of “ground level (existing) *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070.

The Height of Building in clause 4.3(2) of the WLEP 2011 is a development standard in accordance with the definition set out below:

Development standards’ is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Despite the variation to the Height of Building control which occurs as a result of the topography of the land and modified (man-made) components, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design new modern high-end alterations and additions that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impacts on the Bindi Place streetscape.

The proposed development has been designed to have minimal impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under WLEP 2011 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

Objection to Development Standard – Height of Building (Clause 4.3(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council* at [42] and [43].

Comment: Clause 4.6(3)(a) of the WLEP 2011 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is ‘*unreasonable or unnecessary in the circumstances of the case*’.

In determining a merits-based assessment for the Height of Building of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – *Veloshin v Randwick Council* [2007] NSWLEC 428.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Beacon Hill precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3, as outlined below:

- The objectives of the WLEP 2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP 2011 R2 zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a moderate topography sloping from south to the north boundary. The resulting constraints from the topography of the site contribute the minor variation in the building height as the extent of non-compliance is responsive to the natural fall of the land and the sloping topography of the site.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible and the principles of tenacity are achieved.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project architect has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
- The breach to the building is minimal with no impact to the streetscape.

- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. Given the modified state of the site, through this application the permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the WLEP 2011. This essentially limits any redevelopment potential of the site without varying Council's standard.

2. The underlying objective or purpose of Clause 4.3 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: It is determined that the maximum building above ground level (existing) is 8.86m for the proposed alterations and additions. This results in a 0.36m variation or 4.24%. The building height breach is minor and is the result of the sloping topography of the site and the existing man-made level changes where the natural ground crossfalls from west to east across the site to cause the marginal non-compliance. Additionally, the existing sub-floor level influences the non-compliance as it protrudes approximately 1.5m out of the natural ground influencing the sitting of the dwelling which has ultimately impacted the pitch of the roofline to be marginally non-compliant.

It is our professional opinion that the proposed alterations and additions are acceptable as they will not have any adverse impacts on the amenity of the adjoining properties. The location of the additional level has been designed with generous side setbacks to ensure minimal impacts to neighbouring properties. The proposed works are acceptable and will provide visual interest, are consistent with roof forms in the area, are of a bulk and scale consistent with the locality and provide reasonable access to views or view corridors.

As a result of the above, the application now proposes a variation to Clause 4.3 Height of Buildings. The review above allows a thorough analysis of the objectives of Clause 4.3, which confirms that the proposal is consistent with the objectives of the zone, as outlined below:

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

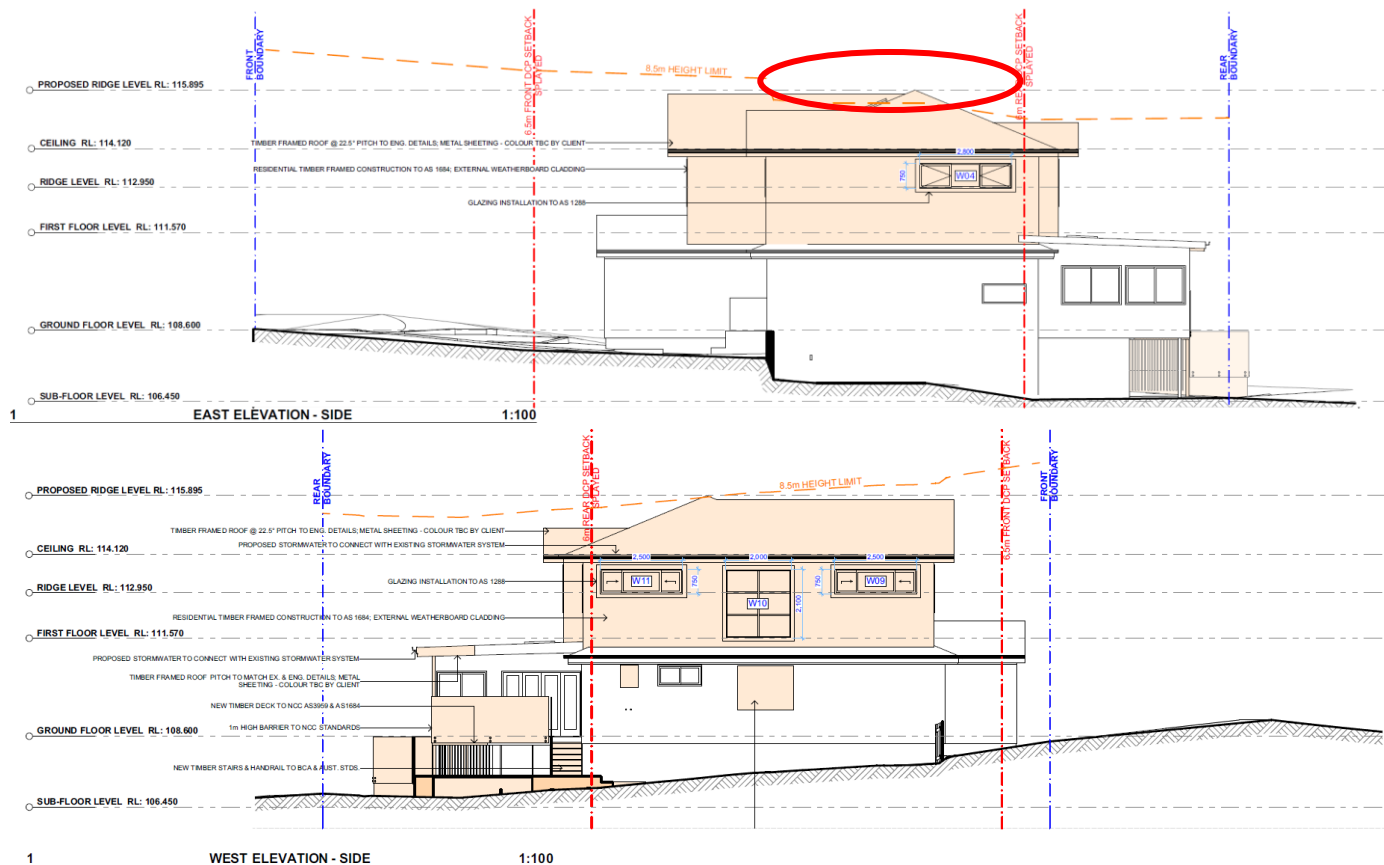
The proposed development is compatible with the height and scale of surrounding and nearby development. The proposal is in keeping with the desired future character of the Bindi Place precinct noting the capacity for future development in the street, particularly with the adjoining neighbours at 4 and 6 Bindi Place which are currently single storey dwellings. The proposed ridge height of the additional storey at 5 Bindi Place sits approximately 4m above the existing ridge heights of the two neighbouring properties to the east and west of the site. The potential for development on the adjoining sites suggests that the height and scale of the proposal is not unreasonable as it will remain compatible with the future desired character of the streetscape.

Additionally, the steep topography from the southern side of the cul-de-sac to the northern side of the street has a considerable effect on the height and scale of the streetscape. The height of the proposed dwelling on the northern side of the cul-de-sac has been thoughtfully designed to respond appropriately to the height and scale of the development elevated on the southern side of the street. The proposal meets this objective.

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

The proposal has been strategically designed by the project architect to have compliant side setbacks. The proposal will not have a visual impact, will not adversely disrupt views, will not increase privacy or amenity impacts to neighbouring properties.

The excerpt below of the eastern elevation shows the extent of the breaches of the height control, how the non-compliance is influenced by the man-made level changes, and how the front façade of the dwelling is below the building height regulation. The compliant western elevation illustrates how the breach is influenced by the topography of the site. The proposal meets this objective.



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

The project designer has strategically designed the proposal to integrate seamlessly into the existing streetscape of Bindi Place. The proposal will have no adverse impacts on the scenic quality of Warringah's coastal or bush environments. The proposal meets this objective.

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

The site cannot be viewed from any nearby reserves or relevant public places. The visual impact of the proposal from the road is consistent with the Bindi Place bulk and scale character. Due to the existing building heights, bulk and scale and the topography of the sites, the visual impact of the proposal is consistent with the Bindi Place precinct. The proposal meets this objective.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing

and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Bindi Place, and therefore the building height as proposed, can be supported by Northern Beaches Council.

On the basis of the above, it is considered that the proposal is reasonable and there are sufficient environmental planning grounds to warrant approval, as submitted.

3. 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]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of a relatively minor variation as the proposal does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed.

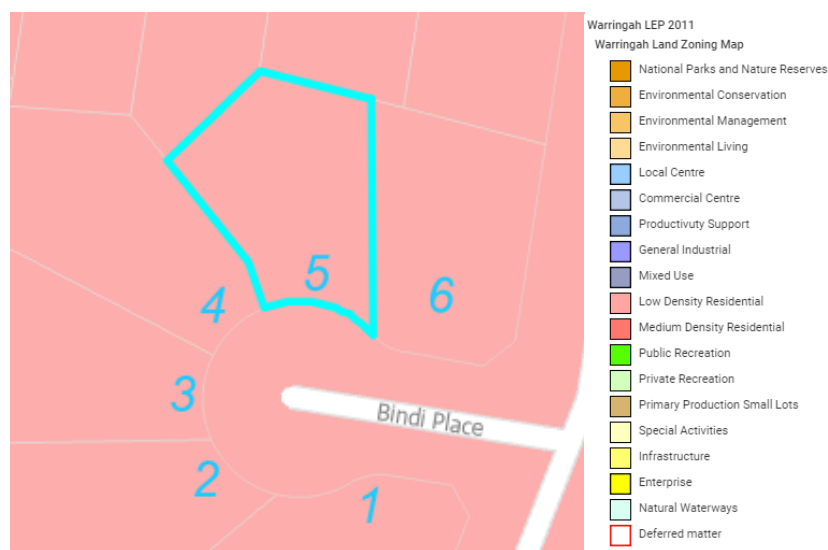
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

Comment: Whilst the proposal seeks a variation to Councils numerical Height of Building standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments within the immediate area and approvals granted show that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Provisions



Zone R2 Low Density Residential

1 Objectives of zone

- 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.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

Comment:

The site is zoned R2 Low Density Residential. A dwelling house is a permissible land use with Council's consent. The proposal is consistent with the relevant objectives of the zone noting that the proposal enhances the existing dwelling house and retains the use which provides a land use variety noting dwelling houses, and secondary dwellings in the immediate area. The proposal revitalises the site which is consistent with recent works to modernise properties within the locality.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land and man-made alterations to the land which makes strict compliance difficult to achieve whilst appropriately distributing height, in the form of legitimate dwelling, on this particular site. Further justification to support the proposed variation is provided below:

- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

Planning principle: assessment of height and bulk

• The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposal, represents a new functional dwelling through alterations and additions which enhances the site and blends in with the natural landscape.

From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the WLEP 2011 Height of Building control are achieved notwithstanding the technical non-compliance (See pages 8-10).
- The objectives of the WLEP 2011 R2 zone are achieved notwithstanding the technical non-compliance. (See page 11).
- Compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area and in keeping with the desired future character of Bindi Place.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible and the principles of tenacity are achieved.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.

Topography: The site has a moderate topography sloping from the south to the north boundary. The resulting constraints from the topography of the site contribute the minor variation in the building height as the extent of non-compliance is responsive to the natural fall of the land and the sloping topography of the site. The proposed first floor addition is maintained well below the interpolated height plane for a considerably larger proportion of the dwelling than that of which sits slightly above, demonstrating that the proposal is suitably responsive to the natural fall of the land (Refer to elevations on page 9).

Characterisation of development: The proposed development is appropriately characterised as alterations and additions to the existing dwelling and is bound by the levels of the existing development. Therefore, the proposed first-floor addition has been designed in accordance with the existing footprint and siting of the lower-ground and ground floors. The proposed pitched roof design at the first-floor additional level is the most skilful design solution in consideration of the context of the site and of the architectural style of the existing dwelling. Ultimately the existing sub-floor level has influenced the minor breach to the building height as the lower-ground floor protrudes approximately 1.5m out of the natural ground influencing the sitting of the dwelling which has consequently impacted the pitch of the roofline to be marginally non-compliant. In our opinion the proposal is not unreasonable as it is suitably responsive to the constraints imposed by the existing sitting of the dwelling house.

Minor nature of breach: The breach to the building height is confined to pitch of the roof on the eastern elevation with the extent of the breach quantitatively and qualitatively appropriately described as minor. Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [202] NSWLEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with objective 1.3(g) of the EP&A Act. While strict compliance could be achieved by amending the roof design, such outcome would significantly compromise the design quality and amenity of the development in circumstances where the building height breaching elements do not give rise to adverse streetscape, residential amenity, or environmental consequences. The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land and a functional and usable dwelling.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling and the topographical constraints on the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, facilitating the development of a single storey dwelling to accommodate an additional storey is a reasonable request and in keeping with the desired future character of the surrounding locality. Thus, permitting a minor variation to the building height development standard promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

2. 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(3)(b) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the proposed dwelling which will breach the development standard. This report finds that a merit assessment is applicable and determines that there are sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

1(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 5 Bindi Place, Beacon Hill.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor in our opinion and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Beacon Hill precinct.

The proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. The permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the WLEP 2011. This essentially limits any redevelopment potential of the site without varying Council's standards.

It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. It is noted the assessment has been undertaken in relation to the most recent court case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.