

Clause 4.6 Exception to Development standards

Consent is sought for a Alterations and Additions including a First Floor Addition with internal alterations to an existing dwelling at 29 Woodbine Street, North Balgowlah. A development application is submitted pursuant to the provisions of Northern Beaches / Warringah Local Environment Plan 2011

Definition of Building height

The definition of building height contained in the Dictionary to the LEP is defined as

(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,

The Development Standard for Building Height

In accordance with the Building Height Map of the LEP, the site is subject to a building height standard of 8.5m within the R2 Low Density Residential zone.

The Proposed Building Height

The proposed building height at the uppermost ridge is 8.82m, at the front roof ridge line the building height is 8.48m. The area of the building height variation is wholly contained within the uppermost roof line and is minor numerically speaking at 3.7% over the development standard. the breach then diminishes to full compliance along the rise of the land and fall of the roof line. (refer to submitted plans and Section Plan B-B)

The applicant proposes a variation from the building height development standard.

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.

Comment:

Clause 4.6 of the LEP notably is designed to provide flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.

The variation to the height control arises because of the topography of the site and elevated nature of the existing dwelling. The encroachment into the height plane is wholly located within a small portion of the roof line which is centrally located on the site and immediately diminishes to full compliance along the fall of the roof lines.

It is significant to note that the variation does not request to alter land zoning or density. All efforts have been made to design the building to follow the contours of the land; provide a reasonable home addition and minimise excess bulk and scale of the dwelling. An amended design to the roof or overall Design and positioning of the addition would compromise the overall aesthetics and viability of the addition and would have no noticeable gains other than to diminish the aesthetics of the design and hinder the social and economic use of the land for the current and future owners of the home.

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:

The height development standard is not expressly excluded from the operation of clause 4.6.

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 encroachment is located centrally to the land and is wholly contained within the roof space owing to the fall in the land and elevated ground floor level. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the site for the reason that a revised roof design may adversely compromise the aesthetics of the building without achieving any material gain.

With set limitations in viable options for extending this modest home and more importantly integrating the proposed addition into the existing form and architectural character of the home. The architectural form of the building as a whole takes into consideration issues of bulk and scale. The proposal is considered appropriate in this case and will be readily absorbed into the built environment and landscaped setting of the locality.

- The breach occurs due to the proposed first floor addition (as acceptable under WLEP and the WDCP). The breach is minor (3.7%) and well setback from the side boundaries.
- Where the breach occurs articulation has been introduced into the design of the First floor addition by "stepping in" and "terracing" the external walls, Inclusion of an open deck provides visual relief of the First Floor Addition when viewed from public and private places.
- There is adequate separation between dwellings so there is sufficient ventilation and open space to not appear 'crowded' or over-developed. The breach will not contribute to any additional perceived overshadowing of adjoining properties in this case, the non-compliance occurs within part of the roofed area of the dwelling, the extent of overshadowing is non material as shadowing is predominately contained to the rear garden of 29 Woodbine street and casting onto Bangaroo Street whilst moderately extending into the rear garden of the neighbouring home at 31 Woodbine street between 9am and 12pm.
- Demolition of the existing ridge line results in some reduced bulk and compensates for the minor breach
- The proposal does not result in any unreasonable loss of privacy or over shadowing as detailed in submitted Statement of Environmental effects to private open space as noted above with existing trees/vegetation creating a visual break minimising any privacy concerns.
- There is no impact on the coastal or bushland environment
- The proposed development does not introduce the need for demolition of existing dwellings resulting in any potential requirement for cut and fill.
- Existing site constraints include the home being built up off the ground due to the slope of the locale gives rise to the non compliance.

When taking into consideration the scale and form of surrounding developments the proposal is considered appropriate in this case and will be readily absorbed into the built environment and landscaped setting of the locality which consists of 1 and 2 storey residential dwellings, Multilevel Residential apartments and Local shopping precinct. Existing trees, vegetation and Boundary fences will be maintained keeping the streetscape consistent. It is reasonably concluded that "there are sufficient environmental planning grounds to justify contravening the development standard" in this instance.

- 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, 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:

The objectives of the zone are 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 and Northern Beaches Council

The objectives of the height control are:

- 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.*

Comment:

The proposed height variation arises in respect to part of the roofed area. The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site as detailed through this statement of Environmental effects. There are no adverse heritage impacts associated with the proposed development. The proposed height and scale of the development is sympathetic to the local streetscape.

As detailed in point 3, The proposal is consistent with the objectives of the height control and the objectives of the zone.

(b) the concurrence of the Director-General has been obtained.

Comment:

It is expected Council will obtain the concurrence of the Director-General as required.

- 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. Comment:*

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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.

Comment:
Not relevant as the Proposed addition is not for subdivision or within the zones specified in the clause.

7. After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Comment:
It is assumed that the consent authority will keep the required records.

8. This clause does not allow development consent to be granted for development that would contravene any of the following:

- 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,*
- c. clause 5.4. (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 Key Sites Map as the Dee Why Town Centre.*

Comment:
The proposed additions will not impact the above planning controls.

Summary
The proposed addition is designed to enhance the resultant home and integrate within the local context and is therefore consistent with the existing and desire future character of the area, the proposed variation from the development standard is reasonable in this instance.

Strict compliance is unreasonable in this case as the required space building height and structural requirements needed for a First Floor Addition would not be achieved, An amended design to the roof or First Floor addition would compromise the overall aesthetics of the addition and would have no noticeable gains other than to diminish the aesthetics and viability of the design resulting in an unuseable dwelling for the owners and will hinder the promotion of social and economic welfare of the community and stop the economic use of the land.

