

20 October 2020

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 2095

Dear Sir,

**Development Application DA2020/0431
Amended Clause 4.6 variation request – Height of buildings
Proposed mixed use development
1129 – 1131 Pittwater Road Collaroy**

This clause 4.6 variation request has been updated to reflect the following amended plans prepared by Barry Rush:

A01A	LOCATION DIAGRAM
A02A	BASEMENT FLOOR PLAN
A03A	GROUND FLOOR PLAN
A04A	FIRST FLOOR PLAN
A05A	SECOND FLOOR PLAN
A06A	THIRD FLOOR PLAN
A07A	ROOF PLAN
A08A	ELEVATIONS EAST & NORTH
A09A	ELEVATIONS WEST & SOUTH
A10A	SECTIONS A-A & B-B
A11	DEMOLITION PLAN
A12	EXTERNAL COLOUR SCHEDULE
A13	SITE ANALYSIS PLAN
A14	DRIVEWAY RAMP SECTION
A15	SHADOW DIAGRAMS MID WINTER

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control 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.

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and 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

It has been determined that the proposed development has a maximum building height along its eastern roof parapet of 12 metres with height increasing to a maximum of 13 metres where the site has a localised depression in its south western corner. This represents a building roof parapet non-compliance of between 1 and 2 metres or between 9 and 18%. The lift overrun has a maximum height of 13.2 metres above ground level representing a non-compliance of 2.2 metres or 20%. The extent of non-compliance is depicted in the following images.

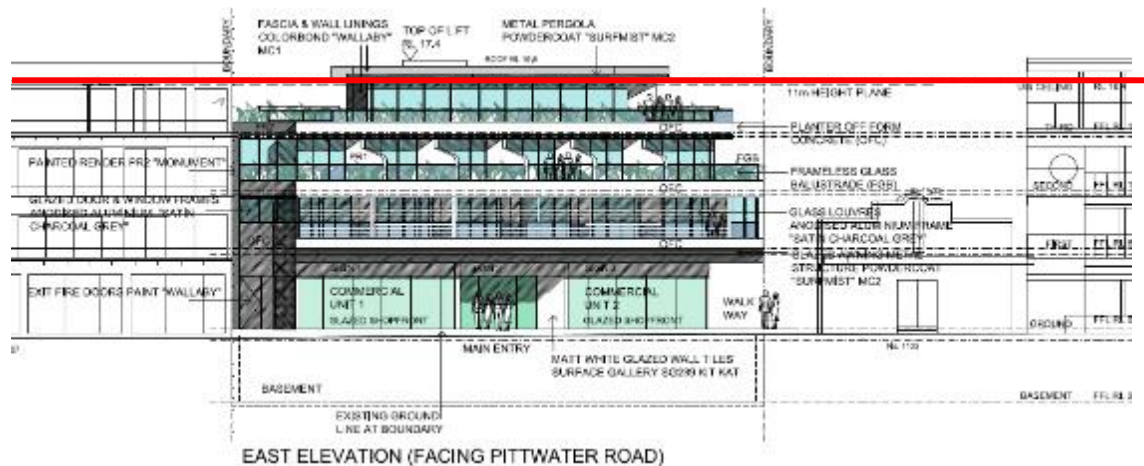


Figure 1 - Plan (east elevation) extract showing extent of 11 metre building height breach

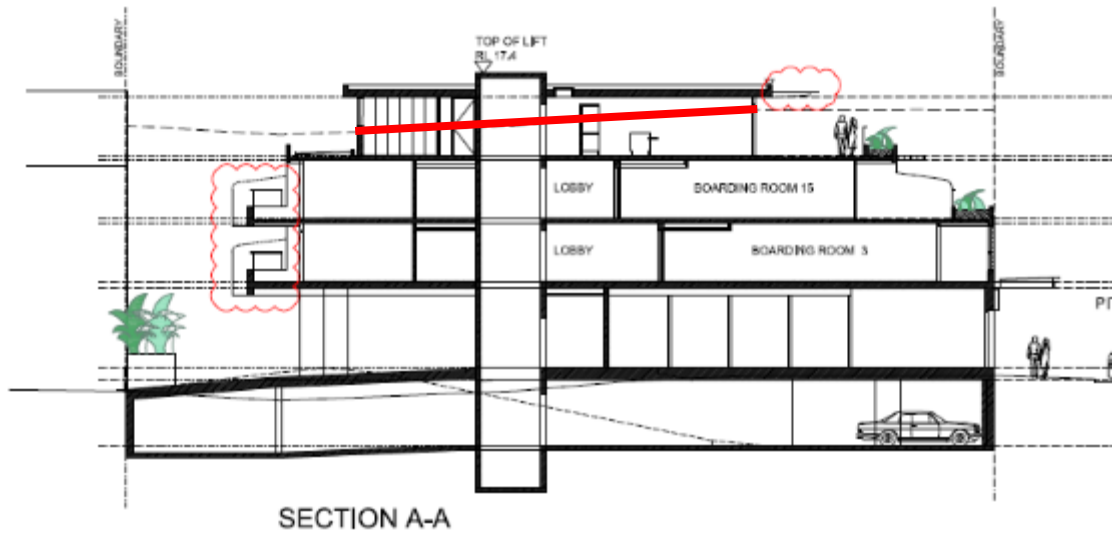


Figure 2 - Plan (section A-A) extract showing extent of 11 metre building height breach

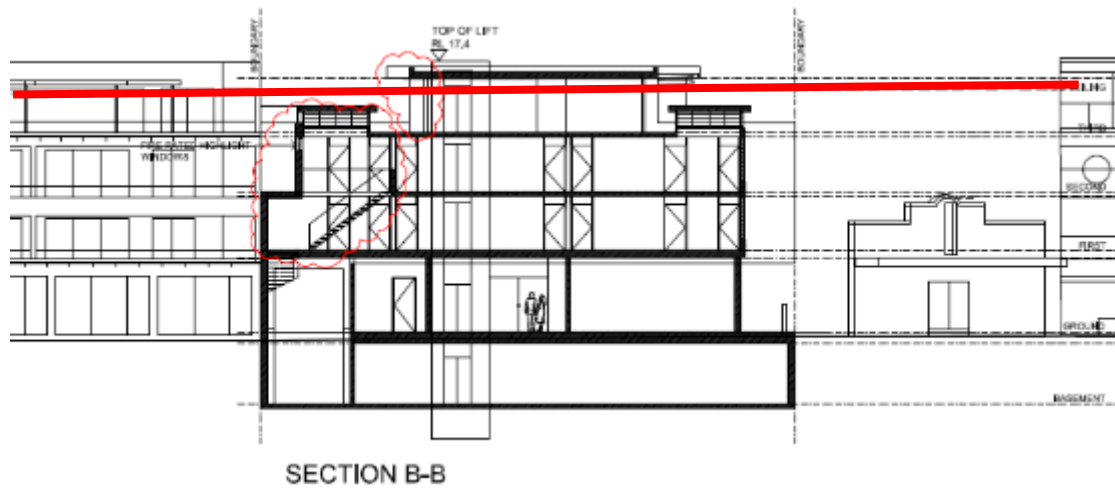


Figure 3 - Plan (section B-B) extract showing extent of 11 metre building height breach

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) 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.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Clause 4.6 Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Consistency with zone objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone. The stated objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;*

Response: The proposed development achieves this objective notwithstanding the height variation proposed in that it incorporates commercial tenancies that will facilitate uses that are able to serve the needs of people who live in, work in and/ or visit the local area.

- *To encourage employment opportunities in accessible locations;*

Response: The subject property is ideally suited to increased employment opportunities associated with the proposed ground floor office given its immediate proximity to the Collaroy Beach B-Line bus stop. The proposal achieves this objective notwithstanding the height variation proposed.

- *To provide an environment for pedestrians that is safe, comfortable and interesting;*

Response: The building design and streetscape enhancement works providing an environment for pedestrians that is safe, comfortable and interesting. The proposal achieves this objective notwithstanding the height variation proposed.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment;*

Response: The urban form relates favourably in scale and in architectural and landscape treatments to that established on neighbouring properties. The proposal achieves this objective notwithstanding the height variation proposed.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Response: The proposal, by virtue of its design and siting, will maintain reasonable residential amenity to the adjoining properties in particular the apartments located to the south and west of the site. The proposal achieves this objective notwithstanding the height variation proposed.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined.

Assessment against objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: Development within the site's visual catchment, and within the 11 metre height precinct, is eclectic in nature and currently in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4 level stepped shop top housing building forms. A predominant 4 storey building presentation has been established by recently approved and constructed shop top housing development along Pittwater Road and within this particular street block.

I note that the 3rd and 4th Level building element maintains an appropriate setback to Pittwater Road such that they will be recessive in a streetscape context consistent with that of other recently approved and constructed 4 storey shop top housing development to the north and south of the site as depicted in Figures 4 and 5 below and over page.



Figure 4 - Plan (east elevation) extract showing extent of 11 metre building height breach



Figure 5 – Photographic montage of proposed development and its immediate context.

In this regard, I have formed the considered opinion that the non-compliant building element including its height, bulk and scale are entirely consistent with the height and scale of surrounding and nearby development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site I have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to unacceptable or unanticipated visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties.

In this regard, I note that the non-compliant building element, representing the managers residence, has been designed and located with a constrained footprint to maintain view corridors down both side boundaries and across the front and rear of the property. Accordingly, the design approach adopted at the 4th floor level does in fact minimise visual impact, disruption of views, loss of privacy and loss of solar access.

In relation to visual impact, I note that the non-compliant building element is set well back from all site boundaries such that it is visual recessive as viewed from surrounding properties and in a streetscape context. Visual impacts have been minimised through adopting such design response.

In relation to view loss and the view sharing principles adopted in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 I note that although the proposal will result in moderate view impact that a reasonable quantum of views will be maintained from north and east facing apartments within the adjoining southern and western mixed use buildings with view impact limited to those apartments which currently obtain views due to the underdeveloped nature of the site. I also note that the impact is created by the fully compliant components of the development in particular those located below the 11 metre height standard.

I consider that a view impacts have been minimised through the maintenance of view corridors down both side boundaries and across the front and rear of the property with a view sharing outcome achieved. In forming such opinion, I note that the impacted views are available directly across the side boundary and through the centre of the subject site and from apartments that also breach the 11 metre height standard. As such there can be no realistic expectation associated with their retention.

In terms of privacy, the non-compliant building element has again been designed to minimise privacy impacts through the setbacks adopted and provision of integrated planter boxes to afford secondary privacy attenuation should it be considered necessary.

In relation to solar access, the shadow diagrams at Attachment 1 demonstrates that shadows from the non-compliant 4th floor building element fall predominantly onto the surrounding 3rd storey roof form and do not contribute to non-compliant solar access to the southern adjoining properties.

The proposal achieves this objective.

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

Comment: The non-compliant building height elements will not be readily discernible as viewed from the street or coastal foreshore area. The proposal achieves this objective.

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

Comment: The non-compliant building height will not be visually prominent as viewed from the street or any public area as depicted in Figure 5. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly, pursuant to the first test in *Whebe*, strict compliance is unreasonable and unnecessary under the circumstances. It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Pittwater Road in favour of a consistent and cohesive streetscape and urban design outcome.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the building height standard objectives. Adopting the first option in *Wehbe* strict compliance with the building height standard has been demonstrated to be unreasonable and unnecessary

Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the variation it being noted that the building heights proposed provide for the contextually appropriate and cohesive streetscape. A better urban design and streetscape outcome is achieved.

The additional height proposed will ensure that the development maintains a complimentary and compatible streetscape height and form consistent with the heights and form of recently approved and constructed shop top housing development along this section of Pittwater Road. We note that all floor levels are nearly identical to those established by the shop top housing developments to the north and south of the site. A localised depression towards the rear of the site appears to have been artificially created contributing to the building height breach in this location. It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Pittwater Road in favour of a consistent and cohesive streetscape and urban design outcome.

The building is of exceptional design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

Whilst strict compliance could be achieved through deletion of the managers residence such outcome would thwart objective 1.3(d) of the Act being to promote the delivery and maintenance of affordable housing given that strict compliance has been found to be unreasonable and unnecessary having regard to the zone and building height standard objectives.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming

A handwritten signature in black ink, appearing to read 'Greg Boston', written in a cursive style.

Greg Boston
B Urb & Reg Plan (UNE) MPIO
Director

Attachment 1 Shadow diagrams

